19-254

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~339~~. 126

SOLOMON G. KITCHEN, APPELLANT,

vs.

WILLIAM C. RAYBURN ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICTS OF MISSOURI.

FILED JANUARY 19, 1872.

SUPREME COURT OF THE UNITED STATES.

No. 333.

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vs.

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICTS OF MISSOURI.

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1 MISSOURI DISTRICTS, *sct:*

Pleas before the honorable circuit court of the United States for the districts of Missouri, at the April term thereof, A. D. 1870.

SOLOMON G. KITCHEN, COMPLAINANT,
ag'st
WILLIAM C. RAYBURN ET AL., DEFENDANTS. } In chancery.

Be it remembered that, heretofore, to wit, on the twenty-first day of August, A. D. 1868, there was filed in the clerk's office of the circuit court of the United States for the districts of Missouri, the following bill in equity in the above-entitled case, to wit:

Bill.

In the circuit court of the United States for the districts of Missouri.
In chancery.

DISTRICTS OF MISSOURI, *ss:*

To the judges of the circuit court of the United States for the districts of Missouri:

Solomon G. Kitchen, of Batesville, and a citizen of the State of Arkansas, brings this his bill against William C. Rayburn, Jane Rayburn, his wife, Mathew J. Timberman and Margaret Timberman, his wife, Barney Rayburn, Moore Rayburn, Panola M. Rayburn, and
2 Josephine Rayburn, all of the county of Dunklin, and all citizens of the State of Missouri.

And thereupon your orator complains and says that, in the year 1866, he was the holder and owner of certain bonds, to wit, one hundred and nineteen bonds of the Cairo and Fulton Railroad Company, a company incorporated by the laws of the said State of Missouri, each and all of said bonds bearing date May 23, 1857, and signed by M. Braymur, as president, and by K. Teasdale, as secretary, and having the corporate seal of said company thereto affixed, and countersigned by John Moore, John Wilson, and A. G. Waterman, trustees, whereby the said Cairo and Fulton Railroad Company promised and agreed to pay to or assigns, the sum of one thousand dollars, in the city of New York, on the first day of October, 1862, and also interest for the same from the first day of October, 1857, at the rate of seven per centum per annum, payable on the first days of October and April, in each and every year ensuing the date thereof until said principal sum should be paid; to be paid upon the presentation of the interest-warrants annexed to said bonds as they severally become due; each of said interest-warrants being for the sum of thirty-five dollars, and there being forty-four of said interest-warrants on each of said bonds, when the same were delivered to defendant W'm C. Rayburn, as hereinafter stated.

Your orater further shows that, on or about the 16th day of March, 1866, he deposited with said defendant, W'm C. Rayburn, at the
3 county of Dunklin, and districts of Missouri aforesaid, the bonds and interest-warrants aforesaid, to be safely and securely kept by him for your orater, and to be redelivered by said defendant Rayburn to your orator, when he, said Rayburn, should be thereunto afterwards requested; that said Rayburn then and there received said bonds and warrants for the purpose aforesaid; and it thereupon then and

there became and was the duty of the said Rayburn to take due and proper care of said bonds and warrants and safely keep the same for your orater, and to redeliver the same to your orater when the said defendant should be hereunto requested.

Your orater further shows and charges that, said Rayburn kept said bonds in his possession until about the 20 day of December, 1866, when, in violation of his trust and of his duty in that behalf, and with intent to defraud your orater, the said Rayburn converted and disposed of said bonds and warrants to his own use by selling and delivering the same to Henry H. Bedford, Randolph Webber, and Daniel B. Miller, and received therefor, as your orator is informed and believes, the sum of ten thousand dollars.

Your orater further shows that the said W. C. Rayburn, on or about the 11th day of March, 1867, purchased from one John Timberman, of said county of Dunklin, the following described real estate, with its appurtenances situated in said county of Dunklin, and State of Missouri, to wit: Beginning at the northeast corner of the southwest quarter of section No. fifteen, (15,) in township No. twenty-one (21) north, of range No. ten (10) east; thence running west one hun-
4 dred and sixty poles; thence south eighty poles; thence west eighty poles; thence south one hundred and twenty-three and one-half poles; thence east two hundred and thirty-one and one-sixteenth poles; thence north ten (10) poles; thence east twenty-four (24) poles; thence north six and one-half degrees west, two hundred and three and one-half poles, to the beginning, containing two hundred and seventy-one and three-fourths acres, more or less.

Also one lot on the east side of the public road leading from the town of Bloomfield, in Stoddard County, to Kennett, in Dunklin County, containing one hundred and ninety-two (192) poles, and beginning at the corner in the center of the big road immediately in front of the land now occupied by John Timberman and a little to the southeast of his house-yard; thence running east sixteen poles; thence north twelve poles; thence west sixteen poles; thence south twelve poles, along the centre of said road, to the place of beginning.

Your orater further states that the consideration given and paid by said W. C. Rayburn to said Timberman was five thousand dollars.

And your orater states and avers that the money so paid for said real estate was a part of the identical money received by said Rayburn from said Bedford & others for the bonds & warrants aforesaid.

And your orater further shows that the said defendant W'm C. Ray-*mond*, at the time of the purchase and sale of said real estate, and of said bonds & warrants, was and is now, wholly insolvent; and
5 your orator charges that *that* said Rayburn, with the intent of defrauding your orator, took a conveyance of said real estate from said Timberman to one Jacob V. Rayburn, his son, a copy of which is herewith filed, made part hereof, and marked as Exhibit "A;" that said Jacob V. Rayburn paid no value or consideration whatever for said real estate, but the sole consideration paid for same was a part of the proceeds of said bonds, as already stated.

Your orator further shows that said Jacob V. Rayburn departed this life in the month of June, 1867, intestate and without issue, leaving as his heirs and legal representatives, his father, the said W'm C. Rayburn, Jane Rayburn, his mother, Moore Rayburn, Mathew J. Timberman, Margaret Timberman, his wife, Barney Rayburn, Panola M. Rayburn, and Josephine Rayburn, the brothers and sisters of the said Jacob V. Rayburn, the last two named being minors under the age of eighteen

years; that, on the death of said Jacob V. Rayburn, the legal title to said real estate vested in his said heirs and legal representatives.

Your orator further shows that, immediately on the purchase of the real-estate aforesaid by the said W'm C. Rayburn, defendants entered on said premises and have been in possession of the same ever since, receiving and enjoying the rents, issues, and profits thereof, the said Jacob V. Rayburn occupying the same, with the other defendants up to the time of his death.

All which actings and doings of the said defendants are contrary to equity and good conscience, and tend to the manifest injury of your orater in the premises.

6 In consideration whereof and forasmuch as your orater is remidiless in the premises at and by the st'ict rules of the common law, and is relievable only in a court of equity, where matters of this nature are properly cognizable and rel'evable:

To the end, therefore, that the said defendants may, if they can, show why your orater should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to all and singular the matters aforesaid, and that as fully and particularly as if the same were here repeated, and they and every of them distinctly interrogated thereto;

And that the said defendants, or such of them as shall appear to have the legal title to the real estate and premises aforesaid may be decreed to conv'y such legal title, and to deliver the possession of said premises free from all incumbrances done or suffered by them, unto your orater, and that the title to said premises may be vested in your orator; and that an account may be taken of the rents, issues, and profits of said premises, and of any and all moneys received by defendants, or either of them, in respect of the same, and a decree accordingly; and for such further or other relief, as the nature of the case may require, and to your honors seem meet:

May it please your honors to grant unto your orator a writ of subpœna, to be directed to the said defendants, William C. Rayburn,
7 Jane Rayburn, Matthew J. Timberman, Burney Rayburn, Moore Rayburn, Panola M. Rayburn, and Josephine Rayburn, the two last-named being minors, under the age of eighteen years, thereby commanding them at a certain time and under a certain penalty, to appear before this honorable court, and then and there full, true, direct, and perfect answer make to all and singular the premises; and further to stand, perform, and abide such further order, direction, and decree therein, as to this honorable court shall seem meet.

EWING & HOLLIDAY,
Solicitors for Complainant.

And afterwards, in vacation of said circuit court, the following proceedings were had in this cause, on the twenty-first day of August, A. D. 1868.

Order for subpœna.

SOLOMON G. KITCHEN, COMPLAINANT,
ag'st
WILLIAM C. RAYBURN ET AL., DEFENDANTS. } In chancery.

This day comes the complainant, by his solicitor, and files his bill in chancery against the defendants in this cause; and, on motion of said solicitor—

It is ordered that a subpœna in chancery be issued in said cause, returnable to rules, on the first Monday of October, 1868.

8 And afterwards, on the twenty-second day of August, 1868, there was issued out of the clerk's office of the said circuit court, the following subpœna, in chancery.

Subpœna.

MISSOURI DISTRICTS *sct:*

The President of the United States to William C. Rayburn and Jane Rayburn, his wife, Matthew J. Timberman and Margaret Timberman, his wife, Barney Rayburn, Moore Rayburn, Panola M. Rayburn, and Josephine Rayburn, greeting:

You are hereby commanded to be and appear at rules, to be held at the office of the clerk of the circuit court of the United States for the districts of Missouri, on the first Monday of October next, at the city of St. Louis, then and there to answer the bill of complaint of Solomon G. Kitchen, a citizen of the State of Arkansas, filed against you on the 21st day of August, 1868. Hereof fail not.

Witness the Honorable Salmon P. Chase Chief Justice of the United States, the 22d day of August, 1868. Issued at office, in the city of St. Louis, under the seal of said court the day and year last aforesaid

[SEAL.] BEN. F. HICKMAN, *Clerk.*

MEMO.—The defendants to enter their appearance in this suit in the clerk's office, on or before the day at which the writ is returnable; otherwise the bill may be taken pro confesso.

BEN. F. HICKMAN, *Clerk.*

9 Upon which subpœna, the marshal for the eastern district of Missouri, made the following return.

Marshal's return.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

Executed this summons by delivering a copy the same to the within named William C. Rayburn, Jane Rayburn, Mathew J. Timberman, Margaret Timberman, Barney Rayburn, Moore Rayburn, Panola M. Rayburn, at Dunklin Co., Mo., on 16th day of Sept., 1868. Josephine Rayburn not found.

I also delivered a copy of the bill in this cause to Mathew J. Timberman at the same time.

J. B. ROGERS,
U. S. Marshal, East. Dist., Mo.

And afterwards, at the October term of said circuit court, the following further proceedings were had in this cause, on Wednesday, the fourth day of November, A. D. 1868, to wit:

Alias summons ordered.

SOLOMON G. KITCHEN, COMPLAINANT,
ag'st
WILLIAM C. RAYBURN, ET AL., DEFENDANTS. } In chancery.

This day comes the complainant, by attorney, and, on his motion it is ordered, that an alias summons be issued against the defendants in

this cause, returnable to rules, on the first Monday in February, 1869; until which time said cause is now ordered to be continued.

10 And afterwards, on the eighth day of December, 1868, there was issued out of the clerk's office of said circuit court, the following alias subpœna in chancery, to wit:

Alias subpœna in chancery.

MISSOURI DISTRICT, *set*:

The President of the United States, to William C. Rayburn and Jane Rayburn, his wife, Matthew J. Timberman and Margaret Timberman, his wife, Barney Rayburn, Moore Rayburn, Panola M. Rayburn, and Josephine Rayburn, greeting:

You are hereby commanded to be and appear at rules, to be held at the office of the clerk of the circuit court of the United States for the districts of Missouri, on the first Monday of February next, at the city of St. Louis, then and there to answer the bill of complaint of Solomon G. Kitchen, a citizen of the State of Arkansas, filed against you on the 21st day of August, 1868. Hereof fail not.

Witness the Honorable Salmon P. Chase, Chief Justice of the United States, the eighth day of December, 1868.

Issued at office in the city of St. Louis, under the seal of said court, the day and year last aforesaid.

[SEAL.] BEN. F. HICKMAN, *Clerk.*

MEMO:—The defendant to enter her appearance in this suit in the clerk's office, on or before the day at which the writ is returnable; otherwise the bill may be taken pro confesso.

BEN. F. HICKMAN, *Clerk.*

11 To be served on Josephine Rayburn only, the other defendants having been heretofore summoned.

BEN. F. HICKMAN, *Clerk.*

Upon which said alias subpœna, the marshal of the United States for the eastern district of Missouri, made the following return, to wit:

Marshal's return on alias.

The within named Josephine Rayburn, could not be found in the E. Dist., Mo.

J. B. ROGERS, *U. S. M.*
By J. W. MORGAN, *Dep'ty.*

And afte'wards, at rules of said circuit court, held on the first Monday being the seventh day of December, A. D. 1868, the following further proceedings were had in this cause, to wit:

Answer filed.

SOLOMON G. KITCHEN, COMPLAINANT, *agst* WILLIAM C. RAYBURN, ET AL., DEFENDANTS. } In chancery.

This day come the defendants, by Thomas T. Gantt, esquire, their solicitor, and file their answer to the bill of complainant herein against them.

Which answer, referred to in the foregoing order, is in words and figures following, to wit:

Answer.

WILLIAM C. RAYBURN & JANE RAYBURN, HIS wife, Matthew J. Timberman and Margaret, his wife, Moore M. Rayburn, and Milessa Burney Stokes, (wife of Thomas Stokes,) who was served with process in this cause by the name of Burney Rayburn, impleaded with, &c., defendants.

ats.

SOLOMON G. KITCHEN, COMPLAINANT.

12 In chancery, in the United States circuit court for Missouri, October T., '68.

The said defendants, now and at all times hereafter, saving and reserving to themselves all and all manner of benefit & advantage of exception which can or may be taken to the many errors, uncertainties, and other imperfections of the said complainants' bill; yet, for answer unto so much thereof as they are advised that it is necessary for them to answer unto, say that it is not true that the said complainant delivered unto the said William C. Rayburn any bonds of the Cairo and Fulton Railroad, on the terms, conditions, and trusts in the said bill stated.

On the contrary, they say (the said William C. Rayburn stating positively, as of his own knowledge, & the other defendants on information) that the said complainant did deliver to the said William C. Rayburn, one hundred and twenty-four bonds of the Cairo and Fulton Railroad Company, each for the principal sum of one thousand dollars, with coupons attached, for interest, upon the following terms, conditions, & trusts, and no other, that is to say: The said complainant, on the 16 March, 1866, was justly indebted to the said William C. Rayburn, in the sum of eleven thousand dollars; and, to secure to said William C. Rayburn the payment of said sum of money the said complainant placed in the hands of said William C. Rayburn, one hundred and twenty-four of the bonds of the Cairo & Fulton Railroad Company, each for the sum of one thousand dollars, principal money, with coupons attached, for the
13 payment semi-annually of interest at the rate of seven per cent. per annum, said bonds being, as defendants believe, dated 23d May, 1857, and to have been payable 25 years after date; and it was declared and represented by said Kitchen to said William C. Rayburn, at the time of delivering to him, the said Rayburn, the bonds aforesaid, that the same, and all the interest accumulated thereon from the date of said bonds, were convertible, at par, into land along the tract of the said Cairo and Fulton Railroad, at a minimum price per acre; and that the holder of said bonds & coupons could enter land at discretion along the tract of said railroad, & pay therefor with the said bonds & coupons, at par; and that the said William C. Rayburn could by this means become the proprietor of land worth fully eleven thousand dollars, all of which he could pay for with five of the said bonds.

And the said Solomon G. Kitchen requested the said William C. Rayburn to use the other bonds so delivered to him, being (119) one hundred & nineteen in number, in entering other land along the said railroad route; to take the title to such lands in the name of him, the said William C. Rayburn, and to dispose of the same, and thereupon reserving to himself, the said Rayburn, one-eighth ($\frac{1}{8}$) thereof, as his, the said William C. Rayburn's, compensation, to pay the net residues to, or hold the same, for the sole & separate use of the wife of the said Solomon G. Kitchen, who was named Martha.

And said William C. Rayburn, believing the said represent-
14 ations & assurances of the said Solomon G. Kitchen, and being altogether ignorant of the state of affairs of the said Cairo & Fulton Railroad Company, received the said bonds and executed a memorandum or receipt in writing, whereby he acknowledged the receipt of (119) one hundred & nineteen of the said bonds, and promised to invest the same, or the proceeds thereof, and to hold ($\frac{7}{8}$) seven-eighths of the net proceeds of such investment to the sole & seperate use of Martha, wife of the said complainant.

But after the said memorandum was signed and delivered to the said Solomon G. Kitchen, (and the said William C. Rayburn says that it was so delivered to him, and is or was when last seen by the said William C. Rayburn, in the possession of the said Solomon G. Kitchen,) the said Solomon G. Kitchen and the said William C. Rayburn agreed together that the said (119) one hundred & nineteen bonds mentioned in the said receipt should be, in the first instance, dedicated to the full payment and discharge of the said debt from the said Kitchen to the said William C. Rayburn, due & owing as aforesaid, if it should turn out that the five bonds not mentioned in said receipt should be insufficient to pay and satisfy the said debt.

And upon the faith of the said representations & assurances of the said Solomon G. Kitchen to the said William C. Rayburn, made as aforesaid, respecting the value and convertibility of said bonds, and upon the said agreement of the said Solomon G. Kitchen, made after the signing & delivering of said memorandum as to the appropriation
15 of the proceeds of the said (119) one hundred and nineteen bonds, in the first place to the satisfaction of whatever portion of the debt of eleven thousand dollars, due from the said Solomon G. Kitchen to the said William C. Rayburn might remain unsatisfied, by the application thereto of the proceeds of the said five bonds not mentioned in said memorandum, the said William C. Rayburn received the said bonds, one hundred & twenty-four (124) in number, and agreed to convert them into land, as suggested by the said Solomon G. Kitchen, or otherwise dispose of them, so as to satisfy and discharge, in the first place, the debt by the said Solomon G. Kitchen, owing as aforesaid to the William C. Rayburn, and to hold the lands entered by means of the residue of the said bonds, or the net profits arising from the sale & disposition of said bonds & the investment of the proceeds to the use of himself as to one-eighth, and to the sole and seperate use of Martha, wife of the said Solomon G. Kitchen, as to the residue or seven-eight's of said net proceeds or lands; and on the faith of the said delivery & the said agreement the said William C. Rayburn delivered and surrendered to the said Solomon G. Kitchen, certain securities by him held for the payment of the said indebtedness of eleven thousand dollars. And the said defendants say that the said bonds were not, and the said Solomon G. Kitchen at the time well knew that they were not, convertible into land in any manner, and particularly not in the manner stated by said Kitchen to said William C. Rayburn, nor were the same saleable for cash on any terms, and the Cairo & Fulton Railroad
16 Company was hopelessly bankrupt and its obligations utterly worthless.

And afterwards, the said William C. Rayburn, in the month of November, 1866, was offered the sum of ten thousand dollars for the whole of said bonds, 124 in number; and said sum of ten thousand dollars was and is more than said 124 bonds were worth at that time, or at the time when the said Solomon G. Kitchen delivered them to the said William C. Rayburn, or at the time when this suit was commenced,

there being, in fact, no value that could be predicated of said bonds upon any basis of which any prudent person could rely.

And it came to the knowledge of the said William C. Rayburn, while he was considering the propriety of disposing of the said bonds at the aforesaid price, for the satisfaction, in part, of his claim against them, & the said Solomon G. Kitchen, that he, the said Solomon G. Kitchen, had very recently before the said month of November, 1866, to wit, in the month of August, 1866, rated and estimated one hundred & sixty-eight bonds of the said Cairo & Fulton Railroad Company, of the same date, denomination, and tenor with those of the said William C. Rayburn, held as aforesaid, and being on their face, if estimated at par, of the value of $168,000, and interest, to be of the actual cash value of eight thousand four hundred and twenty three dollars, ($8,423,) and no more.

And thereupon the said William C. Rayburn, in good faith, and for the purpose of reimbursing himself in respect of the sum of mo-
17 ney so by the said Solomon G. Kitchen to him, the said Rayburn owing as aforesaid, did sell & deliver the said bonds, one hundred and twenty-four (124) in number, to one Henry H. Bedford, for the sum of ten thousand dollars, which sum the said Henry H. Bedford paid therefor in good faith on or about the first day of December, 1866.

And said defendants say that the said sale was fairly conducted in all respects, & was made for value and in good faith, and that at no time, except that at which said sale was effected, could such a price have been obtained for them, the said bonds, but that the price actually obtained as aforesaid was the result of fortuitous circumstances, transient in their nature, of which said William C. Rayburn opportunely took advantage.

And said defendants admit that the said William C. Rayburn attempted to purchase for his son, Jacob V. Rayburn, the real estate in the bill described with a portion of the money so by him received from said Henry H. Bedford, but defendants wholly deny that such purchase was made in the name of the said Jacob V. Rayburn, with the design of defrauding any one; on the contrary, they say that said purchase & conveyance were intended openly & fairly for the purpose of making an advancement to the said Jacob V. Rayburn; and they deny that the said William C. Rayburn is insolvent as in said bill of complaint is alleged.

And the said defendants say that the title which the said William C. Rayburn endeavored to acquire to the real estate in the said bill of complaint mentioned and described from the said John Timber-
18 man, and to cause the same to be conveyed to the said Jacob V. Rayburn, was wholly defeated in manner following, that is to say: A certain firm, composed of Horace Whittemore & others, had, on the 18th October, 1865, at a term of the circuit court for Stoddard County, Missouri, obtained two judgments against the said John Timberman & another for large sums of money, and on these judgments execution' had been issued and were in the hands of the sheriff of Dunklin County, to be executed before and at the time when the said John Timberman conveyed the said tracts of land to the said Jacob V. Rayburn, and the said judgments & executions were leins on the land aforesaid.

And the sheriff of Dunklin County, by virtue of said executions, did, at the September term of the circuit court for Dunklin County for the year 1867, after due and legal advertisement, expose the said land for sale at the court-house door to the highest bidder, for cash, between the hours of nine in the forenoon and five in the afternoon, during the actual sitting of the said circuit court; and at such sale Reuben P. Owen be-

came & was the highest bidder therefor at & for the price of fifteen hundred and sixty-five dollars, and said real estate was to him stricken off for that sum; and the sheriff of Dunklin County did, afterwards, on the 6 March, 1868, at the March term, 1868, of the circuit court for Dunklin County, by deed, duly acknowledged before said circuit court, convey the said real estate to the said Reuben P. Owen for the price aforesaid.

19 And defendants bring said deed here into court and make the same an exhibit of this answer, marked "M." And, afterwards, the said Reuben P. Owen, on the 14 May, 1868, by deed of that date, made an exhibit of this answer & marked "N," conveyed the said land for value to Moore M. Rayburn, who paid therefor with his own funds & money, and in no wise out of any money received by the said William C. Rayburn from the said Henry H. Bedford as aforesaid; and the said Moore M. Rayburn now holds the said lands as his own, under and by virtue of the deed last above mentioned, and each and all of the other defendants disclaim all interest in & to the same.

And these defendants deny all & all manner of unlawful & corrupt combination, confederation, and conspiracy, against them or any of them in the said bill of complaint alleged.

Without this, that any other matter, cause, or thing in the said complainant's bill of complaint contained, material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, & avoided, or denied, is true, to the knowledge of these defendants. All which matters and things these defendants are ready & willing to aver, maintain, & prove, as this honorable court may direct; and they humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

THO'S T. GANTT,
Solicitor for the Defendants.

20 STATE OF MISSOURI, *County of Dunklin:*

Be it remembered that, on this seventeenth day of October, in the year eighteen hundred and sixty-eight, before me, the subscriber, a notary public within & for the county & State aforesaid, personally appeared William C. Rayburn and Jane Rayburn, his wife, Matthew J. Timberman and Margaret, his wife, Moore M. Rayburn, and Melissa Burney Stokes, and, being duly sworn, did severally and respectively say, on their oaths, that the matters and things in the aforegoing answer stated are true; that, so far forth as they are therein stated to be within the knowledge of the defendants, they are known to them to be true; and, so far forth as they are therein stated to rest on the information of others, they believe them to be true; and they thereto subscribed their respective names.

W'M C. RAYBURN.
her
MELISSA JANE + RAYBURN.
mark.
MATTHEW TIMBERMAN.
MARGARET E. TIMBERMAN.
MOOR' M. RAYBURN.
BURNIE STOKES.

Attest:
JOHN H. STOKES.

And in testimony that the said affidavit was subscribed and sworn to in presence of me, the undersigned, I have hereto set my hand and affixed my notarial seal at office in the town of Clarkton, in the
21 county of Dunklin, in the State of Missouri, on the day and year first herein above written.

[SEAL.] JOHN H. STOKES,
Notary Public.

And afterwards, at the April term, A. D. 1869, of said circuit court, the following further proceedings were had in this cause, on Thursday, the thirteenth day of May, in said year, to wit:

Leave granted to file amended bill.

SOLOMON G. KITCHEN, COMPLAINANT,
ag'st
WILLIAM C. RAYBURN ET AL., DEFENDANTS. } In chancery.

This day comes the complainant, by his solicitor, and on his motion, it is ordered that the said complainant have leave to file an amended bill against the said defendants is this cause, on or before the 1st June next.

And afterwards, in vacation of said circuit court, the following further proceedings were had in this cause, on Saturday, the twenty-ninth day of May, 1869, to wit:

Amended bill filed.

SOLOMON G. KITCHEN, COMPLAINANT
ag'st
WILLIAM C. RAYBURN ET AL., DEFENDANTS. } In chancery.

This day comes the complainant, by his solicitor, and files his amended bill in chancery against the defendants in this cause, leave hav-
22 ing been granted him by the court to file the same, on or before the first day of June next.

Which amended bill, filed as aforesaid, is in words and figures following, to wit:

Amended bill.

SOLOMON G. KITCHEN AND MARTHA A. KITCHEN
v.
WILLIAM C. RAYBURN, JANE RAYBURN, Matthew J. Timberman, Margaret Timberman, Stokes, Burney Stokes, Moore M. Rayburn, Panola Rayburn, & Josephine Rayburn.

In the circuit court of the United States for the districts of Missouri.
In chancery.

To the judges of the circuit court of the United States for the districts of Missouri:

Solomon G. Kitchen and Martha A. Kitchen, his wife, of Batesville, citizens of the State of Arkansas, by leave of the court, file this their

amended bill, against William C. Rayburn, Jane Rayburn, his wife, Matthew J. Timberman and Margaret Timberman, his wife, Burney Stokes, wife of Stokes, Moore M. Rayburn, Panola Rayburn, and Josephine Rayburn, all of the county of Dunklin, and all citizens of the State of Missouri; and thereupon your orater and oratrix complain and say that, in the year 1866, your orater was the owner and holder
23 of certain bonds, to wit, one hundred and nineteen bonds of the Cairo and Fulton Railroad Company, a company incorporated by the laws of the State of Missouri, each and all of said bonds bearing date May 23, 1857, and signed by M. Brayman, as president, and by G. K. Teasdale, as secretary, and having the corporate seal of said company thereto affixed, and countersigned by John Moore, John Wilson, and A. G. Waterman, trustees, whereby the said Cairo and Fulton Railroad Company promised and agreed to pay to or assigns, the sum of one thousand dollars, in the city of New York, on the first day of October, 1882, and also interest for the same from the first day of October, 1857, at the rate of seven per centum per annum, payable on the first day of October and April, in each and every year ensuing the date thereof, until the said principal sum should be paid, to be paid upon the presentation of the interest-warrants annexed to said bonds as they severally became due; each of the said interest-warrants being for the sum of thirty-five dollars, there being forty-four of said interest-warrants on or attached to each of said bonds when the same were delivered to the defendant William C. Rayburn, as hereinafter stated.

Your orator and oratrix show that, on or about the 16th day of March, 1866, at the districts of Missouri, aforesaid, you' orator placed in the hands of defendant William C. Rayburn the aforesaid bonds, one hundred and nineteen in number, with the coupons or interest-warrants thereto attached, as aforesaid, who then and there, by the name
24 of William C. Rayburn, signed, sealed, and delivered to your orator an instrument in writing, bearing date on said 16 day of March, 1866, and which your orator and oratrix bring here into court, and make the same an exhibit of this bill, marked "A," whereby the said W. C. Rayburn acknowledges to have received from your oratrix, Martha A. Kitchen, the sum of one hundred and nineteen thousand dollars, in bonds of the Cairo and Fulton Railroad Company of Missouri, and also the sum of fifty thousand four hundred and five dollars, of coupons or interest-warrants, due and owing by said company, amounting in the aggregate to one hundred and sixty-nine thousand four hundred and five dollars; which said sum the said Rayburn therein and thereby promised to expend in the purchase of lands from John Moore, John Wilson, and Albert G. Waterman, trustees of the said Cairo and Fulton Railroad Company of Missouri, at or near the average price of five dollars per acre, taking the deeds therefor in his, said Rayburn's, own name.

And the said Rayburn further promised in said writing, to sell all the lands so purchased as soon as possible, at such prices as your oratrix, Martha A. Kitchen, should direct.

And that, if he, the said Rayburn, should fail to sell all said lands as soon as the said Martha A. Kitchen might desire, then he was to sell the same at public auction whenever so directed by the said Kitchen, and, after deducting the expenses of stamps and the necessary traveling expenses, to pay unto the said Martha A. Kitchen, or her legal representatives, seven-eight's of all the money that said lands
25 would sell for.

Your orater and oratrix further state that, for the *the* purpose of securing said bonds, said railroad company executed and delivered its certain

deed of trust, bearing date May the 22nd, 1857, (which was duly acknowledged and recorded in the proper counties,) conveying to John Moore and John Wilson, of the State of Illinois, and A. G. Waterman, of the State of Pennsylvania, in trust, a large amount of lands, to wit, 400,000 acres, lying in the counties of Scott, Stoddard, Dunklin, Butler, New Madrid, and Mississippi, in the State of Missouri, which said lands are particularly described in said deed of trust.

And it was provided, among other things, in said deed of trust, that any holder of said bonds might purchase from said trustees any of the lands so conveyed to them at any time, and make payment for the same in said bonds at an average of five dollars per acre.

Your orator and oratrix further state that the said bonds refer to said deed of trust as having been executed by said Cairo and Fulton Railroad Company to secure the payment of the bonds issued by said company, including the bonds hereinbefore described.

Your orator and oratrix further state that when the bonds aforesaid were placed in the hands of said W. C. Rayburn, your orator, at the same time, placed in his hands the deed of trust aforesaid, whereby the said Rayburn was made acquainted with its provisions, and espe-
26 cially the terms and conditions on which the said bonds could be disposed of in the purchase of the lands thereby conveyed.

Your orator and oratrix further state that said Rayburn kept said bonds in his possession until about the 20th day of December, 1866, when, in violation of his said agreement and of his duty and trust in that behalf, and with intent to defraud your orator and oratrix, he converted and disposed of said bonds and warrants to his own use by selling and delivering the same to Henry H. Bedford, Randolph Webber, and Daniel Miller, and received therefor from the said persons the sum of ten thousand dollars.

Your orator and oratrix further state that the said W'm C. Rayburn, on or about the 11th day of March, 1867, purchased from one John Timberman, of said county of Dunklin the following described real estate, with its appurtenances, situated in said county of Dunklin, and State of Missouri, to wit:

Begin'ing at the northeast corner of the southwest quarter of section No. fifteen, (15,) in township No. twenty-one (21) north, of range No. ten (10) east; thence running west one hundred and sixty poles; thence south eighty poles; thence west eighty poles; thence south one hundred and twenty-three and one half poles; thence east two hundred and thirty-one and one-sixteenth poles; thence north ten poles; thence east twenty-four poles; thence north six and one-half degrees
27 west, two hundred and three and one-half poles, to the beginning; containing two hundred and seventy-one and three-fourths acres, more or less.

Also one lot on the east side of the public road leading from the town of Bloomfield in Stoddard County, to Kennett, in Dunklin County, containing one hundred and ninety-two poles, and beginning at the corner at the centre of the big road immediately in front of the land now occupied by John Timberman, and a little to the southeast of his house-yard; thence running east sixteen poles; thence north twelve poles; thence west sixteen poles; thence south twelve poles, along the centre of said road to the place of beginning.

Your orator and oratrix further state that the consideration given and paid by said W. C. Rayburn to said Timberman for said land premises, was five thousand dollars, and the money so paid for the same was a part of the money or proceeds received by said Rayburn from said

Bedford, Webber, and Miller, for said bonds and interest-warrants or coupons.

And your orator and oratrix further state that the said defendant William C. Rayburn, at the time of the purchase and sale of said real estate was and now is wholly insolvent; that said Rayburn, with intent to defraud your orator & oratrix, took a conveyance of said real estate from said Timberman and Delimma, his wife, to his son Jacob V. Rayburn, bearing date the 11th day of March, 1867, whereby the said grantor granted, bargained, sold, and conveyed to the said grantee the
28 said real estate; which said deed was duly acknowledged and filed for record in the recorder's office of said county of Dunklin, on the 21st day of November, 1868, and which your orator and oratrix bring here into court, and make an exhibit of this bill, marked "B."

That the said Jacob V. Rayburn paid no value or consideration whatever for said real estate, but the sole consideration therefor was a part of the proceeds of the sale of said bonds as already stated.

Your orator and oratrix further state that the said Jacob V. Ray*mond* departed this life in the month of June, 1867, intestate, and without issue, leaving as his heirs and legal representatives, his father, William C. Rayburn, Jane Rayburn, his mother, Moore M. Rayburn, Margaret Timberman, the wife of Matthew J. Timberman, (formerly Margaret *Timberman*,) Burney Stokes (formerly Burney Rayburn,) wife of Stokes, Panola M. Rayburn, and Josephine Rayburn, the brothers and sisters of the said Jacob V. Rayburn, the last two named being minors, under the age of eighteen years.

That, on the death of said Jacob V. Rayburn, the legal title to said real estate descended to and vested in his said heirs and legal representatives.

Your orator and oratrix further state that, immediately on the purchase of said real estate by the said William C. Rayburn, the said defendants entered into the possession of said premises, and are still in possession of the same, and ever since said purchase have been and are still receiving and enjoying the rents, issues, and profits thereof, the
29 said Jacob V. Ray*mond*, occupying the same with the other defendants up to the time of his death.

Your orator and oratrix further state that two executions were issued from the office of the clerk of the circuit court of Stoddard County, on the 25th day of September, 1866, on judgments in the said circiut court, in favor of Horace Whittimore and others, and against John M. Muse and the said John Timberman, one for $973.31, the other for $297.33, directed to the sheriff of Dunklin County, and by him levied on the lands aforesaid, with others, on the 5th day of January, 1867; and, at the September term, 1867, of said Dunklin circuit court, on the fourth (4th) day of said month, the said real estate was sold to one Reuben P. Owen, who was the attorney of the said execution creditors.

And at the March term, 1868, the said sheriff conveyed the same to said Owen by deed, dated March the 6th, 1868.

That said Owen, on the 14th day of May, 1868, by deed of that date, conveyed the same to defendant' Moore M. Rayburn.

Your orator and oratrix state that the said Owen, at the time of his purchase of said real estate at said sheriff's sale, had actual notice of the previous sale and conveyance of the real estate first herein-described by the said Timberman to the said Jacob V. Rayburn.

And that, at the time of the conveyance of the said real estate to the said Moore M. Rayburn by said Owen, the said Rayburn had actual notice of the conveyance from said Timberman to the said Jacob V. Rayburn.

30 That, although in the said conveyance from the sheriff to Owen and from Owen to the said Rayburn, there is expressed the consideration of fifteen hundred and sixty-five dollars, your orator and oratrix charge, that, in fact, no consideration whatever was paid by either the said Owen or the said Rayburn, and that there was no agreement on the part of either of them to pay any consideration.

That said Moore M. Rayburn had no knowledge of the conveyance to him at the time it was made, did not assent to the same, and was totally ignorant of the whole transaction.

Your orator and oratrix state that, after the said conveyance from the sheriff to the said Owen, and prior to the execution of the deed by said Owen to said Moore M. Rayburn, to wit, on or about the day of 1868, the debt, interest, and cost due to said Whittimore and others, the execution creditors, and called for by said execution, were paid by said Muse who was the principal debtor, the said Timberman being only the surety of said Muse, and that the payment of said debt by said Muse removed the only incumbrance that existed on said real estate.

Your orator and oratrix charge that the sale of the bonds aforesaid by said William C. Rayburn to the said Bedford, Webber, and Miller, and the purchase of the real estate aforesaid with the proceeds of the sale thereof in the name of said Jacob V. Rayburn was a fraud upon your orator and oratrix.

31 That the conveyance from the said Owen to the said Moore M. Rayburn was procured by said W. C. Rayburn, in pursuance of the same fraudulent purpose, and the same was taken in the name of the said Moore M. Rayburn through the instrumentality of the said William C. Rayburn, in furtherance of and in order the more effectually to carry into effect his fraudulent designs against your orator and oratrix.

All which actings and doings of the said defendants are contrary to equity and good conscience, and tend to the manifest injury of your orator and oratrix in the premises. In consideration whereof, and inasmuch as your orator and oratrix are remediless in the premises at and by the strict rules of common law, and are relievable only in a court of equity, where matters of this nature are properly cognizable and relievable:

To the end therefore, that the said defendants may, if they can, show why your orator and oratrix should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make to all and singular the matters aforesaid, and that as fully and particularly as if the same were hereby repeated and they and each of them distinctly interrogated thereto.

32 And that the said defendants or such of them as shall appear to have the legal title to the real estate and premises aforesaid, may be directed to convey such legal title and deliver the possession of said premises, free from all incumbrances done or suffered by them, unto your oratrix, the said Martha A. Kitchen, and that the title to said premises may be vested in your oratrix?

And that an account may be taken of the rents, issues, and profits of said premises, and of any and all moneys received by defendants or either of them in respect to the same, and a decree rendered accordingly; and your orator and oratrix pray for such further or other relief as the nature of the case may require and to your honors may seem meet.

May it please your honors to grant unto your orator and oratrix a writ

of subpœna to be directed to the said defendants, William C. Rayburn, Jane Rayburn, Matthew J. Timberman, Margaret Timberman, Burney Stokes and Stokes, Moore M. Rayburn, Panola Rayburn, and Josephine Rayburn, the two last-named, being minors, under the age of eighteen years; thereby commanding them, at a certain time, and under a certain penalty, to appear before this honorable court, and then and there full, true, direct, and perfect answer make to all and singular the premises; and further to stand, perform, and abide each further order, direction, and decree as to this honorable court shall seem meet.

EWING & HOLLIDAY,
Solicitors for Complainants.

33 And the said deed from Timberman to Rayburn, marked Exhibit B, and referred to in the foregoing amended bill, is in the words and figures following, to wit:

Copy of deed from Timberman to Rayburn.

Copy of deed from Timberman to Rayburn.—(From Dunklin County record.)

This deed, made and entered into this the eleventh day of March, eighteen hundred and sixty-seven, by and between John Timberman and Dilemma Timberman, his wife, of the county of Dunklin, in the State of Missouri, parties of the first part, and Jacob V. Rayburn, of the county and State aforesaid, party of the second part, witnesseth: That the said parties of the first part, for and in consideration of five thousand dollars to them paid by the party of the second part, the receipt of which is hereby acknowledged, do, by these presents, grant, bargain and sell, convey and confirm unto the said party of the second part the following-described tract or parcel of land situated in the county of Dunklin, in the State of Missouri, to wit: Beginning at the northeast corner of the southwest quarter of section No. (15) fifteen, in township No. twenty-one (21) north, of range No. ten (10) east; thence running west one hundred and sixty (160) poles; thence south eighty (80) poles; thence west eighty (80) poles; thence south one hundred and twenty-three and one-half (123½) poles; thence east two hundred and thirty-one and one-sixteenth ($231\frac{1}{16}$) poles; thence north ten (10) poles; thence east twenty-four (24) poles; thence north six and one-half degrees west, two hundred and three and one-half (203½) poles, to
34 the beginning, containing two hundred and seventy-one and three-fourths ($271\frac{3}{4}$) acres, more or less; also one lot on the east side of the public road leading from the town of Bloomfield, in Stoddard County, to Kennett, in Dunklin County, containing one hundred and ninety-two (192) poles, and beginning at the corner in the center of the big road immediately in front of the land occupied by John Timberman, and a little to the southeast of his house-yard; thence running east sixteen poles; thence north twelve (12) poles; thence west sixteen (16) poles; thence south twelve (12) poles, along the center of said road, to the place of beginning: To have and hold the same, together with all the rights, immunities, privileges, and appurtenances to the same belonging unto the said party of the second part, and to his heirs and assigns forever, the said John Timberman hereby covenanting that he and his heirs, executors, and administrators, shall and will warrant and defend the title to the said premises unto the said party of the second part, and to his heirs and assigns, forever, against the lawful claims of

all persons whomsoever. In testimony whereof the said parties of the said part have hereunto set their hands and seals the day and year first above written.

(Signed) JOHN TIMBERMAN.
" DELIMMA TIMBERMAN.

Witness: SEYMOUR P. ELDRIDGE.

STATE OF MISSOURI,
County of Dunklin, ss:

Be it remembered that, on this eleventh day of March, A. D. eighteen hundred and sixty-seven, before me, the undersigned, a notary
35 public for Dunklin County, came John Timberman and Delimma Timberman, his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing, as parties thereto, and they acknowledged the same to be their act and deed for the purposes therein mentioned; and the said Dilemma Timberman having first been by me made acquainted with the contents of the foregoing conveyance, acknowledged, on an examination seperate and apart from her said husband, that she executed the same and relinquished her dower, in the real estate therein mentioned, freely and without compulsion or under influence of her said husband.

In testimony whereof I have hereunto set my hand and affixed my official seal the day and year last above written.

(Signed) WILLIAM P. NEAL,
Notary Public.

(Copy.)

[U. S. rev. stamp. $5.00.]

36

37 And afterwards, on the twenty-ninth day of May, 1869, there was issued out of the clerk's office of said circuit court the following pluries subpœna, in chancery, to wit:

Pluries subpœna in chancery.

MISSOURI DISTRICTS, *sct.:*

The President of the United States to Josephine Rayburn and Panola Rayburn, greeting:

You are hereby commanded to be and appear at rules, to be held at the office of the clerk of the circuit court of the United States for the districts of Missouri, on the first Monday of August next, at the city of St. Louis, then and there to answer the ammended bill of complaint of Solomon G. Kitchen & Martha A. Kitchen, citizens of the State of Arkansas, filed against you on the twenty-eighth day of May, 1869. Hereof fail not.

Witness the Honorable Salmon P. Chase, Chief Justice of the United States, the twenty-ninth day of May, 1869.

Issued at office in the city of St. Louis, under the seal of said court, the day and year last aforesaid.

[SEAL.] BEN. F. HICKMAN, *Clerk.*

Memo.—The defendants to enter their appearance in this suit
38 in the clerk's office, on or before the day at which the writ is returnable; otherwise the bill may be taken pro confesso.

BEN. F. HICKMAN, *Clerk.*

Upon which said subpœna the marshal of the United States for the eartern district of Missouri made the following return, to wit:

Return on pluries subpœna.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I return this writ, executed by delivering a copy hereof and a copy of the petition to the within-named Panola Rayburn, and a copy of this summons to the within-named Josephine Rayborn, at Dunklin County, in said districts, June 29th, 1869.

C. A. NEWCOMB,
U. S. Marshal E. Dist. of Mo.

And afterwards, in vacation of said circuit court, the following further proceedings were had in this cause on Saturday, the sixteenth day of August, 1869, to wit:

Answer to amended bill filed.

SOLOMON G. KITCHEN ET AL., COMPLAINANTS,
ag'st
WILLIAM C. RAYBURN ET AL., DEFENDANTS. } In chancery.

This day come the defendants, by their solicitor, and file their
39 answer to the amended bill of complainants herein against them.

Which answer, referred to in the foregoing order, is in words and figures following, to wit:

Answer to amended bill.

WILLIAM C. RAYBURN & JANE RAYBURN, HIS wife, Matthew J. Timberman and Margaret, his wife, Melissa Burney Stokes & Thomas Stokes, Moore M. Rayburn, impleaded with, &c., defendants,
ats.
SOLOMON G. KITCHEN AND MARTHA, HIS wife, complainants.

In chancery. In the United States circuit court for Missouri.

Answer to the amended bill of the complainants in this cause exhibited.

The defendants above-named now, and at all times hereafter, saving and reserving to themselves all and all manner of benefit & advantage of exception, which can or may be taken to the many and gross errors, uncertainties, inconsistenc'es, contradictions, and other imperfections in the said complainants' amended bill contained:

Yet, for answer to so much thereof as they are advised by counsel that it is material for them to answer unto, say:

That it is not true that the said complainants or either of them placed in the hands of the said William C. Rayburn, or otherwise delivered to him, any bonds of the Cairo and Fulton Railroad Company, on
40 the terms, conditions, & trusts in the said amended bill stated;

on the contrary thereof, the said defendants say (the said William C. Rayburn stating the fact positively, as of his own knowledge, and the other defendants as believing the same to be true on information by them received,) that, on or about the 16 March, 1866, the said Solomon G. Kitchen, was justly indebted to the said William C. Rayburn in the full sum of eleven thousand dollars, for the payment of which the said William C. Rayburn held certain securities which the said Solomon G. Kitchen was desirous of withdrawing.

And the said Solomon G. Kitchen then produced to the said William C. Rayburn one hundred and twenty-four bonds each for the sum of one thousand dollars, and coupons for seven per cent. interest, and represented to the said William C. Rayburn, that he, the said Solomon G. Kitchen, was the owner thereof, all of said bonds being, as these respondents believe, dated May 23, 1857, payable to
or bearer, twenty-five years after date, and most of them actually executed by the Cairo and Fulton Railroad Company; but there were some of said bonds which, on examination subsequently, proved not to have been duly executed nor to have received all the authentications necessary for being issued as the obligations of said Cairo & Fulton Railroad Company. The precise number so not being executed the defendants will state in a supplemental answer.

And the said Solomon G. Kitchen then & there represented to and informed the said William C. Rayburn that the whole of said bonds,
41 with the interest accumulated thereon from the date thereof, were convertible or receivable, at par, into and for land belonging to the said Cairo and Fulton Railroad Company, at a minimum price of five dollars per acre, lying along the track of the said Cairo & Fulton Railroad Company; and that the holder of said bonds & the coupons for the interest thereof could enter land at discretion, to the said Cairo & Fulton Railroad Company belonging, along the track of said railway, and pay therefor with the said bonds and coupons at the said price at par; that the said William C. Rayburn could by this means become the proprietor of land worth eleven thousand dollars, wherefor he could pay with five of the said bonds and the coupons thereto attached; and the said Solomon G. Kitchen requested the said William C. Rayburn then & there to use the *the* remaining one hundred and nineteen of said bonds in entering, in the same manner, other land to the said Cairo & Fulton Railroad Compay belonging, along the line of said railroad lying.

And the said Solomon G. Kitchen requested the said William C. Rayburn to enter such lands in the manner aforesaid, in the name of him, the said William C. Rayburn, and to dispose of the same; and, after paying all expenses attending entry & sale of said lands, to reserve to himself the one-eighth part of the nett proceeds thereof, and to hold the residue or seven-eighths thereof to the use of the said Solomon G. Kitchen.

And the said William C. Rayburn, believing in the confident assurances & representations to him made as aforesaid by the said
42 Solomon G. Kitchen, and being altogether ignorant of the affairs of said Cairo & Fulton Railroad Company, received the said one hundred and twenty-four bonds of the said Cairo & Fulton Railroad Company from the said Solomon G. Kitchen, delivered up to the said Kitchen the securities up to that time held by the said William C. Rayburn for the repayment of the said sum of eleven thousand dollars, and executed to the said Solomon G. Kitchen a memorandum in writing promising to invest the other one hundred and nineteen of said bonds

in lands, and dispose of the same and hold the seven-eighths of the nett proceeds thereof for the sole & separate use of the wife of the said Solomon G. Kitchen, he, the said Solomon G. Kitchen stating as a reason for the use of the name of his wife in said memorandum that he wished to make a provision for his wife & family.

But it was agreed, at the time and after the sealing and delivering of said memorandum to the said Solomon G. Kitchen, between the said Rayburn and the said Kitchen, that the debt or claim of the said Rayburn against the said Kitchen should be paid in the first place out of the one hundred and twenty-four bonds and the proceeds thereof; and that, in the event of the said five bonds not included in said memorandum not proving sufficient to pay the said debt, then that the said one hundred and nineteen bonds should be dedicated in the first place to the making of full payment and satisfaction of the said debt
43 to the said William C. Rayburn so owing as aforesaid, from the said Kitchen.

And upon the faith of this representation and assurance to the said Rayburn, made as aforesaid by the said Kitchen, respecting the value and convertibility of said bonds, and upon the agreement made between the said Rayburn and the said Kitchen as aforesaid, after the signing & delivery of the said memorandum, as to the appropriation of the proceeds of the said one hundred and nineteen bonds in the first place to the satisfaction of whatever portion of the said debt of eleven thousand dollars from the said Kitchen to the said Rayburn owing as aforesaid might remain unpaid and unsatisfied after the application thereto of the proceeds of the sale or investment of the said five (5) bonds not included in said memorandum, the said William C. Rayburn received the said one hundred and twenty-four bonds of the said Cairo and Fulton Railroad Company, and agreed to convert them into land, as suggested by the said Solomon G. Kitchen, and as was declared by him to be practicable, or otherwise to dispose of the same, and out of the proceeds thereof to satisfy, in the first place, the aforesaid debt of the said Solomon G. Kitchen to the said William C. Rayburn owing, and to hold the residue of said proceeds to the use of Martha, wife of Solomon G. Kitchen, as to seven-eight's thereof, reserving to himself the one-eighth thereof.

44 And these respondents say that the said representations and assurances by the said Solomon G. Kitchen to the said William C. Rayburn given, touching the value & convertibility of the said bonds, were wholly false, fraudulent, and deceptive.

That the said bonds of the said Cairo & Fulton Railroad Company were not convertible into land in the manner declared and stated by the said Kitchen to the said William C. Rayburn.

That the untruth of said statements was well known to him, the said Kitchen, at the time when he made the same to said William C. Rayburn.

That the said bonds were not saleable for money on any terms, and had, in fact, no market-value whatever.

That the said Cairo & Fulton Railroad Company was hopelessly and utterly insolvent and its obligations entirely worthless.

That the said railroad company had no title to any such lands as the said Kitchen had represented & declared to the said Rayburn.

And, long afterwards, to wit, in the month of November, 1866, the said *said* William C. Rayburn was offered the sum of ten thousand dollars for the whole of said one hundred and twenty-four bonds, which sum of ten thousand dollars was more than the value of said bonds, on

the 16th day of March, 1866, and more than the value thereof at any time thereafter & prior to the sale thereof by the said Rayburn presently herein to be stated, and more than the value of said bonds
45 at any period between the said 16 March, 1866, and the commencement of this suit.

And it came to the knowledge of the said William C. Rayburn that the said Kitchen himself estimated the said bonds at that time as of inferior value to the said sum of money.

And thereupon the said William C. Rayburn, in good faith and for the purpose of re-imbursing himself for the said debt to him owing by the said Kitchen as aforesaid, & in pursuance of the said agreement made as aforesaid between him, the said William C. Rayburn and the said Solomon G. Kitchen, did sell and deliver to one Henry H. Bedford the said one hundred and twenty-four bonds of the Cairo & Fulton Railroad Company, with the coupons thereto attached, for the sum of ten thousand dollars, and the said Bedford therefor paid the said sum of money, on or about the first day of December, 1866.

And defendants say that the said sale was in all respects & particulars fairly made & conducted, and that full value was received for the things sold, and that the said William C. Rayburn applied the proceeds thereof to the parshal satisfaction of the said debt by the said Kitchen to the said Rayburn owing, leaving a balance of one thousand dollars and interest still due on account thereof.

And respondents say that at no time, except that at which said sale was effected, could so large a sum have been obtained for the said bonds; and that the price for the same then obtained as aforesaid was the result of fortuitous circumstances, transient in their nature, of which said William C. Rayburn opportunely took advantage.

46 And respondents admit that the said William C. Rayburn sought to purchase for his son, Jacob V. Rayburn, the real estate in the amended bill described with a part of the money so by him, said William C. Rayburn, received from the said Bedford.

But respondents deny that such purchase was made, or sought to be made, with any design of defrauding the said complainants, or any one.

They say, on the contrary thereof, that the said William C. Rayburn sought to make the said purchase and to cause the same to be conveyed to his son Jacob, fairly and openly, as an advancement to his said son.

And they deny that the said William C. Rayburn is or was insolvent as in said amended bill is stated.

And said defendants say that the title which the said William C. Rayburn attempted to acquire for his son, Jacob V. Rayburn, to the real estate in said amended bill described, by deed from John Timberman, and which he attempted to cause to be conveyed as aforesaid to his son Jacob, was wholly defeated in manner following, that is to say: A certain firm or copartnership by the name of H. B. Whittemore & Co. had, on the 18th October, 1865, at a term of the Stoddard circuit court, obtained two judgments against the said John Timberman & another, for large sums of money, and on these judgments which remained altogether unsatisfied, writs of executions had issued directed to the sheriff of Dunklin County, Missouri, and the said executions were in
47 the hands of the sheriff of Dunklin County, on the 5 January, 1867, and were on that day levied on the said tract of land; and the said judgments & executions were liens on the same, and so continued at the time when the said John Timberman conveyed the said

land to said Jacob V. Rayburn, and continually thereafter until the September term, 1867, of the circuit court for said county of Dunklin, Missouri, at which September term the said sheriff exposed the said tracts of land for sale to the highest & best bidder therefor, at public auction, at the court-house door of said Dunklin County, according to law, after making due and legal advertisement thereof; and at said sale one Reuben P. Owen became and was the highest and best bidder therefor, for the price & sum of fifteen hundred and sixty-five dollars, and the same to him were struck off for that sum. And afterwards, on the 6 March, 1868, the sheriff of Dunklin County, in consideration of the premises & of the payment of said sum of money so bid as aforesaid by the said Reuben P. Owen, did make, execute, & deliver to said Owen a deed, duly acknowledged in open court, conveying to him, said Owen, the said real estate in said amended bill described.

And afterwards, the said Owen, by deed dated 14th May, 1868, sold and conveyed to Moore M. Rayburn the said tracts of land.

That the said Reuben P. Owen duly paid to the said sheriff of Dunkin County the price by him bid at the sale of said land, at the September term, 1867, of the Dunklin circuit court; and that the said
48 Moore M. Rayburn paid to said Owen, out of his own means & money, the price mentioned in the said deed from the said Owen to said Moore M. Rayburn.

That no part of the said price was paid out of any money arising from the sale of the said bonds of the Cairo and Fulton Railroad Company to said Bedford, by said William C. Rayburn.

And the said Moore M. Rayburn now holds the said land as his own property under and by virtue of the said deed from said Owen, except the southeast quarter of the southeast quarter of section 16, in township twenty-one, of range ten east, which has been since acquired by the said Moore M. Rayburn from the State of Missouri, by patent dated 13 February, 1869.

And all the other defendants here answering, disclaim all interest in the said land, and concede that the same belongs wholly to the said Moore M. Rayburn.

And said defendants bring into court here and file as exhibits, A, B, & C, the deeds from the sheriff of Dunklin County to the said Reuben P. Owen, from Reuben P. Owen to Moore M. Rayburn, and from the State of Missouri to Moore M. Rayburn.

And respondents pray that said exhibits may be taken and considered as part of this answer.

Whether the said Reuben P. Owen, before purchasing for his clients, at sheriff's sale, the property of their judgment-debtor, knew that the said judgment-debtor had, subsequently to the attaching of the lien
49 of created by the said judgment & execution, sold the property affected by said lien, these defendants have no certain knowledge; and, believing that the inquiry would be in an eminent degree idle and irrelevant, they have neglected to make it. But they say that the said Owen, by said sheriff's sale, became clothed with all the title to the said real estate which the said John Timberman had at the date of the rendition of said judgments, or at any time intervening between the said date and the (4th) fourth day of September, 1867, when the said real estate was to the said R. P. Owen sold, by virtue of said judgments and executions, by the said sheriff of Dunkin County, Missouri; and that the same now belongs to the said Moore M. Rayburn as having purchased the same from the said Owen, as hereinbefore is more particularly stated and set forth. And these defendants deny all and all manner of fraud,

contrivance, combination, fraudulent device, fraudulent suggestion, or fraudulent practice against them, or any of them, in the said amended bill of complaint alleged, without this, that any matter, circumstance, cause, or thing against them, or any of them, in the said amended bill of complaint alleged, and not in this answer sufficiently denied, traversed, or confessed, and avoid', is true, to the knowledge of these defendants, or any of them.

All which matters & things these defendants aver & will maintain & prove, as this honorable court shall direct; and humbly pray to be hence dismissed with their reasonable costs & charges in this behalf most wrongfully sustained.

THO'S T. GANTT,
Solicitor for Defendants.

50 STATE OF MISSOURI,
County of Dunklin :

Personally, on this 31st day of July, in the year eighteen hundred and sixty-nine, before me, the subscriber, a notary public within and for the county & State aforesaid, appeared William C. Rayburn and Jane Rayburn, his wife; Matthew J. Timberman and Margaret, his wife; Moore M. Rayburn, Thomas Stokes and Melissa Burnie Stokes, his wife, who being severally & respectively sworn, say on their oath that the matters and things in the aforegoing answer contained & stated they believe to be true.

That, so far forth as said statements, matters, and things purport to be within the personal knowledge of the said defendants respectively, they know them to be true; and, so far forth as they purport to be derived from information to them given by others, they believe them to be true.

And said affiants in witness thereof hereto subscribe their respective names.

WILLIAM C. RAYBURN.
her
JANE + RAYBURN.
mark.
MATTHEW TIMBERMAN.
MARGARET E. TIMBERMAN.
THOMAS C. STOKES.
MALISEA B. STOKES.
MOORE M. RAYBURN.

+ mark made and signed in my presence by Jane Rayburn.
JOHN H. STOKES.

51 In testimony of all which I have hereto set my hand and affixed my notarial seal, at office, in the town of Clarkton, in the county and State aforesaid, on the day and year first hereinabove written.

[SEAL.] JOHN H. STOKES,
Notary Public.

And afterwards, at the April term, A. D. 1870, of the said circuit court, the following further proceedings were had in this cause, on Friday, the eight' day of April, in said year, to wit:

Guardian ad litem appointed.

SOLOMON G. KITCHEN ET AL., COMPLAINANTS,
ag'st
WILLIAM C. RAYBURN ET AL., DEFENDANTS. } In chancery.

This day come the parties herein, by their respective solicitors, and it is ordered by the court that Thomas T. Gantt, esquire, be, and he is

hereby, appointed guardian ad litem for Josephine Rayburn and Panola Rayburn, the minor defendants in this cause, and said Gantt files his acceptance in writing of such appointment.

Replication filed.

And said complainants, by their solicitors, file their replication to the answer heretofore filed in this cause by the defendants, William C. Rayburn et al.

The acceptance of the said guardian ad litem is in words and figures following, to wit:

52 *Acceptance by guardian.*

In the circuit court of the United States. In chancery.

SOLOMON G. KITCHEN & MARTHA A. KITCHEN
v.
W. C. RAYBURN ET AL.

Now comes Tho's T. Gantt, this day by the court appointed guardian ad litem for the minor defendants in the above cause, Josephine Rayburn and Panola Rayburn, and files this his acceptance of said appointment.

TH. T. GANTT.

And the replication referred to in the foregoing order is in words and figures following, to wit:

Replication.

SOLOMON G. KITCHEN & MARTHA A. KITCHEN
v.
W'M C. RAYBURN ET AL.

In the circuit court of the United States for the districts of Missouri.
In chancery.

The replication of Solomon G. Kitchen & Martha A. Kitchen, complainants, to the answer of W. C. Rayburn et al., defendants.

These repliants, saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiences of the said answer, for replication thereunto, say that they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by these repliants, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed & avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver and prove, as this honorable court shall direct, & humbly pray as in and by their said bill they have already prayed.

53

EWING & HOLLIDAY,
Solicitors for Compl'nts.

And afterwards, at said term of said circuit court, the following further proceedings were had in this cause on Friday, the thirteenth day of May, A. D. 1870, to wit:

Cause heard in part.

SOLOMON G. KITCHEN, COMPLAINANT,
ag'st
WILLIAM C. RAYBURN ET AL., DEFENDANTS. } In chancery.

This day come the parties, by their respective solicitors, and, by consent of parties, it is ordered that this cause be now set down for hearing instanter, and thereupon said cause was heard in part; and the hearing thereof not being concluded at the hour of adjournment, it is ordered that the further hearing of said cause be continued until tomorrow morning.

And afterwards, at said term of said circuit court, the following further proceedings were had in this cause on Saturday, the fourteenth day of May, A. D. 1870, to wit:

54 *Cause taken under advisement.*

SOLOMON G. KITCHEN, COMPLAINANTS,
ag'st
WILLIAM C. RAYBURN ET AL., DEFENDANTS. } In chancery.

This day come the parties, by their respective solicitors, and the hearing of this cause was resumed and said cause further heard, and the hearing thereof concluded; and said cause was thereupon submitted to the court on the pleadings and proofs, and arguments of counsel; and the court, not being fully advised of and concerning the premises, doth take the same under advisement.

And afterwards at said term of said circuit court, the following further proceedings were had in this cause on Saturday, the twenty-first day of May, 1870, to wit:

Decree.

SOLOMON G. KITCHEN, COMPLAINANT,
ag'st
WILLIAM C. RAYBURN ET AL., DEFENDANTS. } In chancery.

This day come again the parties, by their respective solicitors, and this cause having been heard and submitted at a former day of the present term, and by the court taken under advisement; and the court being now duly advised of and concerning the premises, it is now finally ordered, adjudged, and decreed that the bill of said complainant herein be, and the same is hereby, dismissed; and that the said complainant pay the costs of this suit, and that execution be issued therefor.

55 And afterwards, at said term of said circuit court, the following further proceedings were had in this cause on Saturday, the twenty-eight' day of May, 1870, to wit:

Appeal granted.

SOLOMON G. KITCHEN, COMPLAINANT,
ag'st
WILLIAM C. RAYBURN ET AL., DEFENDANTS. } In chancery.

This day comes the complainant, by his solicitors, and prays an appeal to the Supreme Court of the United States from the decree heretofore

rendered in this cause, which is allowed, and said appeal now ordered.

And thereupon the said complainant presents to the court the bond of said appel'ant herein, signed by him as principal, and by Samuel N. Holliday as surety, which bond is approved by the court, and ordered to *me* made part of the record herein.

Which said bond is in words and figures following, to wit:

Bond of appeal.

UNITED STATES OF AMERICA,
Districts of Missouri, ss:

In the circuit court of the United States for the districts of Missouri.

SOLOMON G. KITCHEN & MARTHA A. KITCHEN, complainants, *ag'st* WILLIAM C. RAYBURN ET AL., DEFENDANTS. } In chancery and on appeal.

56 Know all men by these presents that we, Solomon G. Kitchen as principal, and Samuel N. Holliday as surety, are held and firmly bound unto William C. Rayburn, Jane Rayburn, Mathew J. Timberman, Margaret Timberman, Melissa Burney Stokes, Thomas Stokes, & Moore M. Rayburn, Panola M. Rayburn, and Josephine Rayburn, in the sum of one thousand dollars; for the payment of which, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this 21st day of May, A. D. 1870.

Whereas the complainants in the above-entitled cause have prayed for and been allowed an appeal to the Supreme Court of the United States to reverse the decree rendered in said cause by the circuit court of the United States for the districts of Missouri, at the April term, A. D. 1870, of said circuit court: Now, therefore, the condition of this obligation is such, that if the above-named Solomon G. Kitchen and Martha A. Kitchen, their heirs, executors, and administrators, shall well and truly prosecute said appeal to effect, and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

SOLOMON G. KITCHEN. [SEAL.]
SAM'L N. HOLLIDAY. [SEAL.]

Signed, sealed, and acknowledged severally by said Solomon G. Kitchen & Samuel N. Holliday, this 21st day of May, eighteen hundred and seventy.

BEN. F. HICKMAN,
Clerk U. S. C. C. Mo. Dis.

57 COMPLAINANTS' EVIDENCE.

Deposition of R. B. Whitmore.

Deposition of Robert B. Whitmore, taken before L. L. Walbridge, esq., a notary public in and for the county of St. Louis, State of Missouri, at St. Louis, on the fourth day of May, A. D. 1870.

ROBERT B. WHITMORE, being of lawful age and sound mind, and being by me first carefully examined, cautioned, and duly sworn to tes-

tify the whole truth touching the matter in controversy in said cause, deposes and says:

Examined by Mr. Holliday:

Q. In the year 1867–8 with what partnership were you connected in business here?

A. With H. Whittimore and Simon M. Boogher.

Q. The partnership before that was yourself and brother, was it not?

A. Yes; we had two or three different firms. Before that it was myself and brother alone; before that myself, brother, and John F. Carter.

Q. Who owned that claim against Timberman and Musse?

A. Myself and brother, and John F. Carter, as near as I can recollect. We had different firms before that. I do not know in which Mr. Brown was interested, but I think the claim against Musse and Timberman belonged to myself, my brother, and Mr. Carter. It, however, had been transferred to myself and brother, and at the time of the settlement of the claim it belonged to myself and brother alone.

58 Q. How did you collect that?

A. We had judgment on the property, in the first place; but the debt was settled in Saint Louis by Mr. Musse.

Q. Give the date and the amount.

A. Mr. J. M. Musse, I think his initials are, came here, on the 21st of December, 1867, and gave us a draft drawn by O. F. Somers and Co. on J. and S. Albert, Cape Girardeau, at sixty days, for $719.12, and the same day another draft at ninety days, drawn by the same parties on the same firm for $725.

Q. Were they paid?

A. These drafts were paid; yes.

Q. Who drew the drafts?

A. Musse. The drafts were drawn by O. F. Somers & Co., I think, at the time, a member of the firm, or in their employ in some capacity. It was drawn by Musse, and signed O. F. Somers & Co. I think he was a member of the firm of O. F. Somers & Co., although I am not positive.

Cross-examination declined.

Signature waived.

Deposition of S. G. Kitchen.

Deposition of Solomon G. Kitchen, taken before L. L. Walbridge, esq., a notary public, in and for the county of St. Louis, State of Missouri, at St. Louis, on the fourth day of May, A. D. 1870.

SOLOMON G. KITCHEN, being of lawful age and sound mind, and being by me first carefully examined, cautioned, and duly sworn
59 to testify the whole truth touching the matter in controversy in said cause, deposes and says:

Examined by Mr. Holliday:

Q. You are the plaintiff in this suit.

A. One of them; myself and wife are the plaintiffs.

Q. When did you become acquainted with William C. Rayburn?

A. In 1861.

Q. State about the placing of these bonds in his possession.

A. I do not recollect the exact date. It was some time in the spring of 1866. Mr. Rayburn agreed to take one hundred and nineteen of the

Cairo & Fulton Railroad bonds, and locate them upon lands that belonged to the railroad, *from* b'y the lands from the proceeds, and sell these lands under our direction, and account to us for seven-eighths of the proceeds.

Q. Was that agreement in writing?

A. That agreement was reduced to writing, and signed by Mr. Rayburn. My recollection is, it was the 16th of March.

(Agreement attached to this deposition, and marked "Exhibit A.")

The agreement was in the name of my wife. It was executed to my wife—the one hundred and nineteen bonds, of one thousand dollars each, with the interest-coupons that had matured from the first of January, 1861, up to the time of the giving of it.

Q. State whether any change was ever made in that agreement afterwards in any way?

A. No, sir; none whatever. Mr. Rayburn was at my house.
60 We had some other business, and settled it up one evening. He staid there until the next morning. He had been examining this deed of trust the evening before, upon the settlement of another transaction between *him* and *I*, and he had read the deed of trust, and examined it, and agreed that he would take these bonds, and go into that arrangement.

Q. You speak of a deed of trust. Which deed of trust do you refer to?

A. Executed by the *the* Cairo & Fulton Railroad Co. to John Moore, John Wilson, and Albert G. Waterman, to secure the payment of these bonds that had been issued, and a deed of trust for four hundred thousand acres of land to secure payment of sixteen hundred bonds to be issued by the co.

Q. Where is that deed of trust?

A. This is the deed of trust I have reference to.

(Deed of trust, accompanying this deposition, and marked "Exhibit B.")

After I put these bonds in the hands of Mr. Rayburn, I learned that he was not doing anything with them, and I wrote to him to return them to Dr. Wise, at Gainsville, Arkansas. I then lived at Jacksonport. He did not answer me. Some considerable time passed, and I sent a young man there, by the name of Robert Carter, with an order to take them up, with the receipt itself, and also a letter to Mr. Rayburn, in the shape of an order to deliver them, and Mr. Carter was authorized to give him his receipt.

Q. When was that?

A. That was in the fore-part of 1867 that I sent Mr. Carter there.
61 I had written to him, though, in the month of September, 1866, to return the bonds to a gentleman, by the name of Wise, at Gainsville, Arkansas, and he wrote to me a letter. Here is the letter that he wrote to me about the matter. It is in Mr. Rayburn's handwriting.

Q. What is the date of that letter?

A. This letter is not dated until February 8th, 1867.

(Letter attached to this deposition, and marked Exhibit "C.")

Q. State all about these bonds—everything in reference to them from the time he got them.

A. He refused to deliver them to Mr. Carter, and then wrote that letter after I sent Mr. Carter there. He wrote that letter to me. That is the first positive news I had. When Mr. Carter came down to my house, in January, 1867, he told me—

(Defendants' counsel objected.)

WITNESS. Well, the rumor reached me that the bonds had been sold, and I did not know anything of it until I got that letter. In fact, I did not believe it.

Q. Do you know Mr. William C. Rayburn's condition?

A. Yes, sir. I was acquainted with it. I am not acquainted with it, now, at this present time. I was acquainted with it in 1863. I became intimate with him. I knew him in 1861. In the spring of 1863, I became intimately acquainted with him.

Q. What was his condition then, financially?

A. Well, he was in bad circumstances, financially, then. He had had misfortunes in his affairs; so he told me himself. Just before the
62 war, he had been in partnership with a man, and got entangled, and was in embarrassed circumstances then.

Q. How was he in 1864, '5, '6, '7?

A. Well, in 1865, at the close of the war, he lived a mile and a half, I suppose, or two miles, from me, and Mr. Rayburn then owned a horses and a small wagon, and some cattle—I don't know how many, some five or six, may be not quite so many—and he told me that that was the principal part of the property that he owned. That is the time he moved away from there, (while I lived there,) up to Missouri, in the latter part of 1865, or the fore-part of 1866. I will not say whether after Christmas, or before.

Q. In the latter part of 1866-'7, did you know anything more about his condition; and if so, state it.

A. Mr. Rayburn had purchased from Mrs. Miller, I think, one hundred and sixty acres, with confederate money, and had it deeded to one of his sons. Mr. Rayburn had contracted with me for one thousand and eighty-seven acres, I think, was the amount, for confederate money, too.

Q. Please state all about that contract with you.

A. That contract took place the latter part of June, or the fore-part of July, 1864, between Mr. Rayburn and *I*.

Q. Where at?

A. In Greene County, Arkansas.

Q. Now, state what the contract was.

Mr. GANTT. Was that contract in writing?

63 WITNESS. No, sir; I will explain what there was about it. The contract itself was made, and after he paid me the money I gave him a receipt for the money, specifying that it was for an undivided interest in the land.

Mr. HOLLIDAY, (resuming:)

Q. Now state what has become of that receipt.

A. That receipt was delivered up to me the day before he signed this receipt for these bonds.

Q. What was done with it?

A. I burned it up.

Q. Now state the contents of that—what it was—state the contract?

A. He was to give me $10,000 in confederate money for my undivided interest in twenty-one hundred and some acres of land, known as the Saint Luke tract, owned by myself and Mr. Daniel B. Miller. He paid me ninety-four hundred and some dollars, I do not recollect the exact number of odd dollars now, in confederate money; and he gave me some drafts on the quartermaster (indorsed them, though, himself,)—he was to be liable for them if they were not collected the confederate quartermaster—also a note, I believe, to the amount of about $325, to

be paid in Southern currency, on John Musse and Timberman. That note I did not collect, nor did I collect these drafts quartermaster's scrip.

Q. Did you make and effort to do it?

64 A. Yes; I sent the note to Mr. Chapman in Stoddard County, and he made an effort to collect them, and informed me that he could not collect?

Q. Did you make an effort?

A. I made an effort and could not get it—such efforts as I generally make in collecting debts.

Q. What you did receive you say was——

A. All in confederate money—treasury notes.

Q. How much?

A. Ninety-four hundred and some odd dollars.

Q. Now state what the receipt was, as nearly as you can.

A. The receipt specified that I had received that amount in payment for an undivided half-interest in this Saint Luke contract of land.

Q. An undivided half?

A. Yes, an undivided half. In the spring of 1866 I came up to Missouri. Mr. Rayburn lived about seventeen miles south of Bloomfield. I came by his house, and he came on up to Bloomfield with me. I was going up there to settle up some judgments obtained against me for my own debts, and a good deal against me as security for others, and a good many against Mr. Miller and myself as partners. We had been dealing as partners before the war, and we had got to pay off our indebtedness with these lands. Mr. Rayburn came on up there, and, in talking about the matter, Mr. Rayburn said——

65 We passed right over the Saint Luke tract of land in going up. He had been up there some considerable time and looked over it, and, in talking about the matter, he said he would rather have land lower down the country; that he wanted to move to a place called Clarkton, in Dunklin County, and that if I would give him enough of these Cairo & Fulton Railroad bonds to pay the trustees for a thousand acres of that land he would rather have it than the undivided half of the Saint Luke land. The minimum price of the land stated in the deed of trust being $5 an acre, I gave him four of these thousand-dollars bonds, with the interest-coupons up to that date, which amounted to something over six thousand dollars. I gave him that in lieu of this confederate money on his interest in the Saint Luke land.

Q. State that contract completely, and what was said, if anything, by you in reference to that deed of trust?

A. This took place in Bloomfield, and immediately after the agreement between Mr. Rayburn and myself. This settlement took place with me and the Union Bank and the State Bank of Missouri, Mr. Miller, and others that were concerned, and these lands were put into that settlement—the Saint Luke land.

Q. At what price?

A. At four dollars an acre. Mr. Miller put in his half; I put in mine, and we put them in at four dollars an acre. Mr. Rayburn was there present at the agreement between him and I about the lands—the bonds had not been delivered to me then, but he was present and agreed

66 to it before the thing was done by me. He then went to Arkansas. My home then was in Arkansas, the lower part of Green County. He went down there and I delivered him these bonds and he delivered me that receipt; staid all night there with me, and the next morning this other receipt was executed, and I gave him one hundred and nineteen bonds.

Q. State what was said about that deed of trust, if anything?

A. I told Mr. Rayburn, at Bloomfield, as well as I could recollect, the provisions of that deed of trust. When I got down there I delivered the deed of trust to him and he looked it over,

Q. Was that before you gave up the bonds?

A. Before he gave me up that receipt, and before I delivered up the bonds he took that deed of trust and read it.

Q. Now state, as nearly as you can, exactly the agreement between you at the time he gave you up that receipt; what was the agreement in regard to these four bonds?

A. At the time I gave him these bonds I delivered him the price of a thousand acres of land according to the deed of trust, which would be $5,000. I told him then that may be they might charge him a little more than that, but that I would make it up, and I gave him the four bonds with these interest-coupons, amounting, as I say, to over $6,000. I do not recollect the exact amount over six thousand. It was $35 every six months on each bond. That is the exact agreement between Rayburn and myself. I delivered them to him, and he delivered
67 to me the receipt which I had given him for the confederate money.

Q. When was the contract made for the delivery of these one hundred and nineteen bonds, and that other receipt given?

A. The next morning. He staid that night with me. The agreement that was made at Bloomfield, as I told you, I agreed to give him enough to pay for a thousand acres of that land. When he went down I delivered the four bonds, with the coupons attached, and he delivered me the receipt.

Q. How were they accepted by him, as sufficent, or how. What was the agreement?

A. The statements of both of us was, it was more than enough to pay for the thousand acres. I told him it no difference to me, that he could have them. I did not care for the little extra coupons. I thought they might possibly charge him more than $5 an acre; that is, if he got picked or selected land. If he got inferior land, they would not charge so much. The average price was to be $5.

Q. What was the worth of the Saint Luke land at the time that you made the contract with the bank, when it was presented to turn it over to the bank?

A. I sold them in connection with other lands for four dollars an acre, and I thought I got a very fair price and a high price, considering the situation of the country.

68 Q. Did Rayburn know what you got for them?

A. Yes, sir; it was talked of before the agreement between he and I.

Q. Did he make any statement as to the price being worth more than that at the time?

A. I do not recollect of his making any. Before the war this land had been rated a good deal higher because the railroad line run through one corner of them, and it was then thought that road would be comp'eted pretty soon.

Q. Can you state anything else that you think of that is pertinent to the issue?

A. I do not recollect anything else?

Cross-examination by Mr. Gantt:

Q. What was the value of these lands before the war?

A. I think they were worth about ten dollars an acre.
Q. Were they not worth more than that?
A. Not the whole tract together; parts of the tract were worth more than that before the war.
Q. What are they worth now?
A. I suppose four or five dollars an acre.
Q. Are they not worth more than that?
A. I do not think they are.
Q. The price of them was very much depressed in 1864, was it not?
A. The price was depressed through 1863.
69 Q. I am asking about 1864.
A. Yes, sir.
Q. What were these bonds worth?
A. The railroad bonds?
Q. Yes.
A Well, sir, they were considered by myself and others that were acquainted with them, and with the terms and deed of trust, to be worth about twenty cents on the dollar.
Q. Had you stated a different opinion at any time?
A. I had, upon conditions.
Q. Didn't you get a number of these bonds from the company?
A. Yes, sir.
Q. At what rate did you get them?
A. Well, sir, I will tell you.
Q. Please answer my question.
A. Well, I got them at the rate of five cents on the dollar.
Q. When was that?
A. September, 1866.
Q. Was it not in July or August?
A. No; it was August 24th. I recollect the date now.
Q. Now, was there ever any sale for these bonds, or any means of realizing on them, or was there any market for them until a market was created by the arrangement in Saint Louis, to which *to which* Mr. Bedford and Mr. Miller were parties?
A. Well, sir, I can't say that there was or was not, for I was
70 not here in this country then, and was not acquainted here.
Q. Was there any market for them in the lower part of Missouri?
A. You could sell them there, sir, to any one that wanted to purchase land. You could not sell them to a party who did not want to purchase land. That was the only market for them.
Q. Could they be sold for the purpose of raising money for more than 10 c. on the dollar.
A. In that county do you mean?
Q. Yes, sir; or anywhere that you know of.
A. Well, I think they could.
Q. Where?
A. I think they could have been sold in New York or Philadelphia for a good deal more than that.
Q. Could they have been in Missouri?
A. In Stoddard County?
Q. Yes.
A. I don't think they could. There was no one there had money to advance.
Q. Now what lands were there that could be bought with these bonds?
A. The four hundred thousand acres in the deed of trust.

Q. Where was the title to that land?
A. In the trustees, for that purpose.
Q. Made by a title to the trustees?
A. Yes, sir.
71 Q. Made by the railroad?
A. Yes, sir.
Q. How did the railroad get its title?
A. Got it through the State; from the General Government, part of it, and part from some of the counties that subscribed stock and paid it in land at a dollar an acre.
Q. Don't you know that, in 1866, it was impossible to locate any land by reason of these bonds?
A. No, sir; I do not. I knew it was discretionary with the trustees.
Q. Don't you know that Rayburn made the attempt to locate lands with these bonds and was not able to locate a single acre?
A. I do not. I do not know whether he ever made the attempt or not. I lived in Jacksonport, Arkansas, and he in Stoddard County.
Q. Whereabouts was it he was to get his thousand acres?
A. He was to suit himself; get it where it suited him.
Q. He gave you up the contract for the Saint Luke land on condition that he should get enough bonds to enable him to take up the thousand acres of lands to suit him?
A. Enough bonds for the thousand acres under this deed of trust.
Q. Who' did the bonds belong to?
A. Belonged to me—the bonds that I let him have.
Q. How came you to take a receipt in the name of Mrs. Kitchen?
A. Well, sir, I did it to secure her a living.
72 Q. Didn't you do it for the purpose of defeating the claims of your creditors?
A. I did not, sir.
Q. Didn't you give that as a reason to Rayburn?
A. I did not, sir.
Q. Was any person present besides Rayburn and yourself?
A. My son was present, sir.
Q. At that time did you owe any debt—at the time you turned these bonds over?
A. A few, sir.
Q. Did you owe any debts in Missouri?
A. All I owed at all were here.
Q. Were there judgments against you?
A. Some.
Q, To what amount?
A. Well, I suppose—well, for debt, there was a judgment against me for about eleven or twelve hundred dollars.
Q. Were there judgments against for anything else but debt?
A. There were judgments against me obtained afterwards; a judgment in Perry County for damages done by the Army, amounting to $11,700.
Q. When was that judgment obtained?
A. My recollection is it was obtained in the fall of 1866.
Q. The suit was pending at the time of the transfer of these bonds?
A. I cannot say whether it was or not. I did not know any-
73 thing of the suit until after the judgment, not being served with the process.
Q. Was this the only judgment against you in Missouri?

A. All the one that I recollect of now that was not satisfied. I paid the balance off.

Q. Had you paid the balance off then or since?

A. No; paid them off at the time I made the agreement with Rayburn, or before I got the bonds.

Q. To what amount were there then judgments that have been satisfied since, and had not been satisfied then?

A. The judgments against Miller and myself, altog'her, amounted to about $84,000.

Q. You have settled all these?

A. All, except about $500.

Q. And you are positive you did not say that you wished this paper taken in your wife's name for the purpose of defeating your creditors?

A. I did not say it; and I can give you my private reasons, if you wish*ed*. I did not say any such thing.

Q. Have you known any lands located by means of these bonds since 1866?

A. I have seen some deeds for some.

Q. Do you know of any lands which have been located? I do not care about your seeing the deeds; they will speak for themselves.

A. Only by that means—by means of seeing the deeds.

Q. Are these bonds which are mentioned in this chancery suit the same bonds that you have sued Bedford for in an action of trover?

74 A. Yes, sir.

Q. And the same bonds mentioned in that contract?

A. Which Rayburn gave to my wife? Yes, sir.

Q. Did you not state, in August, 1866, that these bonds were not worth more than 5c. on the dollar; that the bonds and coupons were not worth more than $50?

A. No, sir. I will tell you what I did state.

Q. I ask you that question.

A. Well, under certain circumstances, I said they would not be.

Q. Did not you have a claim against the company; and did not you refuse to receive bonds from the company, in liquidation of that claim, at more than $50—the bonds?

A. I did, sir.

Q. Coupons and all?

A. Yes, sir; $50 the bond.

Q. And you did settle with the company, at that rate, for about one hundred and sixty-eight bonds, did you?

A. Yes, sir.

Q. What did you say that Saint Luke land is worth now?

A. I suppose it is worth between four and five dollars an acre.

Q. Is not it worth more than that?

A. I do not think it could be sold for more, sir. It might bring more in anticipation of some railroad being built near by it.

Q. What does its value consist in?

75 A. Rich level land.

Q. Cotton land:

A. Well, not good first-class cotton land in that latitude.

Q. What is the matter with it for cotton-land?

A. Too wet.

Q. Is it rich, level land?

A. Yes, sir.

Q. Above the overflow of the river, isn't it?

A. Yes, sir; there are some spring-branches that run from the bluff that is near to it, bordering on the bluff and spread out from it, that make it wet.

(Witness was here shown the paper, marked "Exhibit A.")

Q. When was this stamp put on this paper?

A. Well, sir, I do not recollect the date, exactly; it was done, though, since I brought it to Saint Louis.

Q. And since the commencement of this suit?

A. Yes, sir; I think it was, I am not sure, but I think it was since; we had no stamps in Arkansas, at the time of the execution of that; they could not be had at all.

Q. Has not this stamp been put on here within the last year?

A. No, sir; I think not. I think it was more than a year ago. I am not positive. I think it is more than a year. I do not now recollect the exact time when it was.

Q. In whose handwriting is this paper?

76 A. It is in my handwriting, sir, the body of it,

Q. Rayburn is an illiterate man, isn't he?

A. Well, he has a fair education; reads and writes.

Q. But he is an illiterate man, isn't he?

A. I suppose he is what would be termed an illiterate man. He is not a man of any great learning, but he holds himself to be real sharp and shrewed.

Q. That is not the question.

A. Well, he reads and writes.

Re-examination by plaintiff's con'sel, Mr. Holliday:

Q. How is he considered as regards learning?

A. In the country down there, he is a good average man in knowledge, that is, among the farmers.

Q. Can he read writing easily?

A. Writes a tolerable hand, sir, and reads writing, too.

Re-cross-examination by Mr. Gantt, counsel for the defendant:

Q. Do you mean to say that, in March, 1866, all the judgments against you and Miller, except about $500 were satisfied?

A. No, sir; I do not mean to say that they were entered satisfied, but I mean to say there were arrangements made that day, that Mr. Rayburn agreed to take the bonds in lieu of taking this land, that there was an arrangement made that day to settle all the judgments against Miller and myself, but they were not entered satisfied.

Q. Settle how?

77 A. With land, at $4 an acre, and it was arranged that these lands should be received by our creditors at $4 an acre.

Q. Where were your creditors at that time?

A. Part of them here in Saint Louis, and part at Charleston, Mississippi County, and part at Cape Girardeau.

Q. Who represented the creditors at that interview?

A. Mr. Owen, Mr. Bedford, and Mr. Charles Davis, two small claims, small judgments; Mr. had been up here and seen the merchant creditors.

(Mr. Gantt, counsel for the defendant objected.)

WITNESS (resuming.) I want to explain about that.

(Mr. Gantt, counsel for defendant, objected.)

Q. They were not entered satisfied on the record.

A. It was something to be done by virtue of which they were to be satisfied hereafter.

Q. They had not, in fact, been satisfied.

A. No, sir; there was no entry on the record, but there was an arrangement to satisfy them.

Q. But the satisfaction had not been received.

A. No, sir.

Q. The satisfaction not having been received they had not been entered, and it was only intended that something should be done by virtue of which they should be satisfied?

A. Yes, sir; there was something yet to be done.

Q. Exactly: the thing which was to amount to a satisfac-
78 tion had yet to be done?

A. Yes, sir; that is, for a good part of them. There was some parties present that satisfied them.

Q. But that thing contemplated the taking of land which was to be got by means of what Rayburn should do with these bonds.

A. No, sir; oh, no. I will explain to you again about this Rayburn matter. At the time that we came up there to settle off these judgments with our creditors, Mr. Rayburn came up there with me, and at the time he came up there is when he agreed to take bonds to pay for the railroad lands in lieu of the undivided half-interest in the Saint Luke lands, and at the same time the land was turned over to our creditors. I think that batch of lands were turned over to the Union Bank, at $4 an acre—the Saint Luke land. There were some other debts not entered satisfied until along in the fall of 1866. I sold Mr. Bedford a lot of land in the adjoining town of Bloomfield, to satisfy a judgment on his part, but he did not get that entered as satisfied until sometime, probably, in 1866–7—the latter part of 1866 or the fore part of 1867. I took his note for them and placed them in the hands of Sandford Jackson, and whenever judgments were entered satisfied, he was to clear up the judgments.

79 Redirect examination by Mr. Holliday, counsel for the plaintiff:

Q. In reference to that damage suit in Perry County, for $11,000, at the time of this negotiation and the taking of this receipt from Rayburn, did you know anything of any such claim?

A. I did not know, sir, that I was sued at that time.

Q. Did you know of any such suit against you?

A. I did not, sir. I was not with the party that did the damage, and I did not know anything about it. I did not know there was a suit pending. The first I heared of the suit, they had an execution down there, levying on my real estate.

Q. In regard to these bonds that you bought from the company, in the cross-examination you stated you took them at $50. State what transaction that was, and the nature of it.

A. The company owed me $8,423, is my recollection of the amount. It is about that, figured up by Bedford, Daniel Miller, and Hill. In the first place, we had had a settlement in June, 1861, that was entered on the records. On these was a lien given to me upon the bonds that belonged to the company, to secure what I had advanced for the company. I had advanced for the company, and endorsed for the company, or drew money on notes for the company rather, (I will not say indorsed for the company,) but drew money on my individual note for the company, and there was an order entered on the railroad record, giv-
80 ing a lien on all these bonds for this amount, and they came down

to Arkansas, to see me about it, (I mean Bedford, Miller, and E. W. Hill,) and they informed me at that time, that they were re-organizing the company; that they were going to build the railroad; that Mr. Choutean was in with them, and that they were going to build it.

(Mr. Gantt, counsel for the defendant, objected to this portion of the answer.)

WITNESS (continuing.) And at the time that they were there, I delivered them all the bonds that were in my possession, but about 168, I believe, was the number, and gave Mr. Bedford a writing. He professed to be the financial agent and the attorney, he said, for the company. I gave him an instrument of writing, stating that if they would bring me that money that the company owed me in thirty days, that I would deliver them the bonds at that rate to the company, but that I would not dil'ver them up to any individual at that price. The writing was given that I was to deliver them to the company for that money. I wanted to have the company have them, so that the country might get the benefit of the road. My reason for desiring the location of the road was I had some other lands left, and I thought it would make them valuable.

Q. It was only in that connection that you said they were worth $50 the bond, was it?

(Defendant's counsel objected to the form of the question.)

81 A. When I refused to take them for more than $50 on the bond, in that computation, I did it from this cause: I knew that there were a large number of the bonds that had been taken from Mr. Sturdevant down here by military force, and that there was bonds in the hands of the former president, Mr. Brannan, that might possibly be converted into lands, and if the good land was all taken, (and that is what I stated at the time,) that if the good lands were all taken, and only the inferior, or bad lands left, that I would not give more than $50; but I was going to hold on to enough to make my money under that original agreement, in 1861. The inferior lands would not make them worth more than that.

Q. Is there anything else you wish to explain in reference to your cross-examination?

A. As to this arrangement about the entry of the judgment satisfied, I wish to explain about that: At the time Mr. Rayburn and I came to that agreement, about him receiving the bonds in lieu of the debt, he said he wished to do it. The arrangement was made to settle off the judgment that was against Mr. Miller and myself, jointly, and all that was against myself, individually, in the bank, and against Mr. Miller, individually, in the bank, with lands at $4 an acre, but I do not think they were all entered satisfied though, at the time that the deeds were made.

Q. What deeds?

82 A. The deeds that were made to convey the land to them for entry of judgment satisfied.

Q. How long before the receipt was given by Mr. Rayburn to you?

A. I do not recollect how many days; only a few days before.

Q. Where were you when the deed was made for this land?

A. I wish to state that the reason of the judgment not being satisfied at that time, that the deeds had to be carried to Arkansas for my wife to sign.

Mr. GANTT. They had not, in fact, been delivered?

A. No, sir; they had to be carried to Arkansas for my wife to sign. They were carried down there, and signed in the presence of a clerk, but he did not happen to have a seal, and he put a scroll in lieu of his

seal, and they came up. I did not know, but he had a seal at the time he took the acknowledgment. When he took the acknowledgment and forwarded them, I was to leave them with the clerk. They were then returned, and afterwards acknowledged in Jacksonport. The clerk in Green County, first took the acknowledgement on them, and the judgments were not entered satisfied until they were sent to Arkansas, and re-acknowledged in the spring of 1866 In 1866, I moved my family from Green County to Jacksonport, and the first transaction between Rayburn and I took place when I lived in Green County. The first acknowledgment of the deeds was there.

83 Q. At the time you made the agreement with Rayburn, and got his receipt, did you know of the defects in the acknowledgment in regard to the clerk's seal?

A. No; I did not: did not know it then. The deeds were acknowledged, I think, the day before Mr. Rayburn and I settled. I am not positive, but I think it was the day before Mr. Rayburn gave me that receipt. It was acknowledged by the clerk, who went to my house, fifteen miles distant. I hired him to go there, and he went there, and my wife signed them, and he took the acknowledgment. About twenty or thirty days afterwards the deeds were sent to me, in Jacksonport, to have them re-acknowledged. I had moved immediately afterwards to Jacksonport.

Q. Do you know the condition of Mr. Rayburn's two sons?

(Defendant's counsel objected to the question as not growing out of the cross-examination.)

A. Mr. Rayburn's sons returned from the army before he moved from Arkansas. They had no means visible, and Mr. Ray*mond* told me himself they were poor, and he wanted these lands that he had contracted with me for—the Saint Luke lands—to convey to his sons. I offered to make him the deed any time in 1864 or 1865, up to the time that they came home. He delayed the taking of it to see whether they were living or not. He had not heard from them for some time, and he said he did not know whether he wanted the deed made to his wife or his sons. That was the reason of the delay in the making of the deed. I

84 never did refuse to make the deed, and never said I would not make it.

Recross-examination by Mr. Gantt, counsel for the defendant:

Q. At the time that you refused to take these bonds for more than $50, the bond with the coupons included, in settlement of your claim with the company, did you consider the bonds to be worth twice that amount?

A. Provided I could get the first choice of the lands, or medium-class lands. I consider they were worth a good deal more than twice that amount, if I could get the medium-class lands.

Q. Under all the circumstances at that time, knowing what you did know, did you consider that you were getting bonds from the company at less than half of their value?

A. Well, sir, to a man that was able to hold them, I considered that I was; but I was not in that situation to hold them at the time, and would rather have the money.

(Last question repeated.)

WITNESS:

A. Well, sir, I will say that I did.

Q. You have been an officer of that company, have you not?

A. I was an officer; was president of that company.

Q. And were at the time that you settled that?

A. Yes, sir. I did not know it, though, then, from what the
85 representations to me were, that they had elected a new president, but I found out afterwards that it was not so.

Q. The bonds had come into your hands, by virtue of your being president, hadn't they?

A. Yes, sir.

Q. And you refused to give them up, or to settle for them, except for less than half of their value.

(Plaintiff's counsel objected to the question as not growing out of the cross-examination.)

A. No, sir; I did not do that. I gave, as I told you, a writing to Mr. Bedford. I thought, from their representations, that they had elected a new president. They so represented to me, and I had a writing also from a man named Green S. Poplin, who signed his name a' president of the Cairo and Fulton Railroad, and they represented to me that he was the president of the company; that they had a new election; and I refused to give them up until I got my pay under the resolution of the board, passed in 1861, in the case of my not being willing to take them at a greater value. I knew Mr. Brennun was working with the road, and I knew Mr. Bedford, and I was not willing to take them at a greater price and risk them in the disposition of the land, though I would rather have had my money at that time than to have had the bonds at that price. I was out of money; had just come out of the war, and was without means.

Signature waived.

86 The receipt of William C. Rayburn, attached to and referred to in the deposition of Solomon G. Kitchen, and marked "Exhibit A," is in words and figures following, to wit:

Receipt of Raybourn.

WILCOX, ARK., *March 16th, A. D.* 1866.

Received, from Martha A. Kitchen, the sum of one hundred and nineteen thousand dollars, in bonds of the Cairo & Fulton Railroad Company of Missouri, and I also received fifty thousand four hundred and five dollars of coupons or interest-warrants due and owing by said company, amounting, in the ag'regate, to the sum of one hundred and sixty-nine thousand four hundred and five dollars, which said sum I promise to expend in the purchase of land from John Moore, John Wilson, and Albert G. Warterman, trustees of the said Cairo & Fulton Railroad Company of Missouri, at or near the *the* average price of five dollars per acre, taking the deeds in my own name; and I further promise to sell all the lands purchased as aforesaid, as soon as possible, at such prices as the said Kitchen may direct; and if I should fail to sell all said lands as soon as said Kitchen may desire them, I promise to sell the same at public auction whenever so directed by the said Kitchen; and after deducting the expenses of stamp and the necessary travelling expenses, to pay unto the said Martha A. Kitchen, or her legal representatives, seven-eight's of all the money that I may sell the said lands for.

Given under my hand and seal the date above written.

W. C. RAYBURN. [SEAL.]

[5-ct. int. rev. stamp.]

87 The deed of trust from the Cairo & Fulton Railroad Company, attached to and referred to in the deposition of Solomon G. Kitchen, and marked Exhibit "B," is in words and figures following, to wit.

Deed of trust.—C. & F. R. R. Co.

This indenture, made this twenty-third day of May, in the year of our Lord one thousand eight hundred and fifty-seven, between the Cairo and Fulton Railroad Company, of Missouri, of the first part, and John Moore and John Wilson, of the State of Illinois, and Albert G. Waterman, of the State of Pennsylvania, trustees, of the second part, witnesseth:

Whereas, the said parties of the first part, for the purpose of raising funds from time to time, for the construction, furnishing, and completion of their railroad, as surveyed and established, under and by virtue of the laws of the State of Missouri, propose to issue and deliver from time to time, as may be necessary, their bonds or obligations, bearing even date herewith, and thereby to become indebted to divers persons, bodies politic or corporate, who shall become holders of said bonds or obligations, in the just and full sum, in the aggregate, of one million and six hundred thousand dollars, lawful money of the United States of America, secured to be paid by their sixteen hundred bonds or obligations of one thousand dollars each, providing for the payment unto the said persons, bodies politic or corporate, or their assigns, respectively, the said sums of money therein provided to be paid, on
88 the *the* first day of October, which will be in the year one thousand eight hundred and eighty-two, (1882,) and also interest for the same, at and after the rate of seven per centum per annum, payable on the first days of April and October, in each year, upon and after the first day of April, in the year one thousand eight hundred and fifty-eight, (1858,) until the principal sums named in said bonds or obligations, respectively, shall be severally paid and satisfied, in the manner and form in the said bonds or obligations set fourth and declared, and as by reference thereto will more fully appear:

Now, therefore, this indenture witnesseth, that the said parties of the first part, for the better securing and more sure payment of the said sums of money mentioned in said bonds or obligations, and each and every of them, according to the true intent and meaning thereof; and also, for and in consideration of the sum of one dollar, in hand paid by the said parties of the second part, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, remised, released, conveyed, and confirmed, and by these presents do grant, bargain, and sell, remise, release, convey, and confirm, unto the said parties of the second part, and the survivor and survivors, successor and successors of them, forever, all and singular the lands and real estate described and set forth in the schedule hereto annexed, marked and numbered on pages
89 one to fifty-two, inclusive, and made part and parcel of this indenture, as fully as if the same were herein 'serted at length; being public lands, free from incumbrance, and held by the said parties of the first part, by absolute title in fee-simple, under letters-patent from the United States of America and the State of Missouri, and lying along and contiguous to the railroad of the said parties of the first part, to aid in the construction, completion, furnishing, and maintenance of their said railroad, amounting in quantity to four hundred thousand

acres of land; and also, all and singular the several pieces or parcels of land, being the roadway, stations, and depots of the railroad of the said parties of the first part, from the Mississippi River at the mouth of the Ohio, to the southern boundary of the State of Missouri, being in length about seventy-seven and a half miles; and all and singular the station and depot buildings, engine houses, and other improvements and constructions thereon, now made or hereafter to be made; together with all and singular the emoluments, income, and advantages, tenements, hereditaments, and appurtenances thereto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, claim, and demand whatsoever, at law or in equity, of the said parties of the first part, of, in, and to the same, and each and every part and parcel thereof, with the appurtenances: To have to hold all and singular the lands and tenements hereby granted, or intended so to be, and each and every part and parcel
90 thereof, with the appurtenances, unto the said parties of the second part, and the survivor and survivors, successor and successors of them forever, as joint tenants, and not tenants in common, for the uses and purposes of this indenture, set forth and herein declared; subject however with respect to said railroad, and every part and section thereof, and its appurtenances, to a prior first and only present lien in the nature of a mortgage in favor of the State of Missouri, made to secure and indemnify said State against the payment of such bonds or obligations as said State may, from time to time, issue and deliver to the said parties of the first part, to aid in the construction of said road under and by virtue of the provisions of two several acts of the general assembly of said State of Missouri, entitled and approved as follows: "An act to expedite the construction of the Cairo and Fulton Railroad of Missouri," passed December 11th, A. D. 1855; and also an act to amend an act to secure the completion of certain railroads in this State, and for other purposes, approved December 10th, 1855,—approved March 3rd, A. D. 1857; the amount of said bonds or obligations so to be executed and delivered by said State, and to secure the payment of which by the said parties of the first part, the said lien or mortgage is created in favor of said State, not to exceed the sum of six hundred and fifty thousand dollars, with interest thereon, at the rate of six per sent. per annum, as by reference to said
91 several acts above recited, will more fully appear; it being specifically declared and provided, that nothing herein contained shall have effect, or operate as a lien upon said railroad, nor any part nor section thereof, nor its appurtenances, prior to, or in derogation of, or in any way interfering with, the lien of the said State, under the laws above recited; but that the same shall remain subject in all respects to the full operation of said acts, according to their true intent and meaning, as if this indenture had not been executed, said railroad and its appurtenances to be subject also to the possession, control, and management of the said parties of the first part, so long as the conditions of said bonds or obligations to be issued by the said parties of the first part shall remain unforfeited, by the proper performance of all the stipulations thereof:

Provided always, and these presents are upon the express condition, that if the said parties of the first part shall well and truly pay or cause to be paid to the holders of the said bonds or obligations, and every of them, the principal sums of money therein mentioned, with the interest thereon, at the times and in the manner therein provided, ac-

cording to the true intent and meaning thereof, and of these presents, that then and from thenceforth, this indenture, and the estate hereby granted, shall cease, determine and be ut'erly void.

And this indenture further witnesseth that these presents and the said bonds or obligations are made, executed, and delivered, upon
92 the terms, conditions, and agreements following, that is to say:

First. That the actual possession, use, management and control of the said railroad, with all the appurtenances thereto belonging, shall be and remain with the said parties of the first part, without any molestation or interference of the said parties of the second part, so long as the conditions of said bonds or obligations shall remain without default or forfeiture, and the said parties of the first part shall perform and keep the stipulations thereof.

Second. That, from and after the due execution and delivery of this instrument, the said land shall be deemed and taken to be in the legal possession and control of the said parties of the second part, as in case of absolute title in fee-simple, with full covenants of seizin and warranty, subject only to such occupancy and right of way, and the right to take timber and other materials from any part or parcel thereof, as may be necessary in the constructions, maintenance, and operation of the railroad of the said parties of the first part, and the branches and connections thereto. The said parties of the first part, shall, with as little delay as practicable, furnish to the said parties of the second part, such maps, plats, schedules and lists of the lands hereby granted, as they may require, with descriptions of the locations and character thereof, and a list of valuations, for their information in selling; it being provided that such valuations shall not be less in the aggregate, than two millions of dollars, being an average price of five dollars per acre.

93 Third. That the said parties of the second part, having first been provided with proper maps, schedules, &c., as aforesaid, and fixed therein lists of valuations or selling prices, shall and will grant, bargain, sell and convey to all persons, bodies politic or corporate, applying for the purchase of any of the lands and premises above mentioned, making or tendering payment therefor. Such sales may be for cash or bonds of the said parties of the first part, part and parcel of the same bonds hereinbefore referred to, or partly for each, upon such credits, and at such rates of interest as the said parties of the second part may determine. They may, in selling upon credit, adopt and use such form of contract, and take such security for the payment of purchase-money and its interest as they may determine; and may, from time to time, change and adjust the selling-prices, according to the true value of each tract of land to be sold. But if by reason of inferior quality, any land shall be sold for a less price than five dollars per acre, a sufficient quantity of other land shall have been or shall be sold, at prices above that sum, so as to maintain and keep good at each accounting or return made of lands sold, the actual average of prices for land sold at the time, at not less than five dollars per acre.

Fourth. The purposes of this trust being to secure to holders thereof the payment of the sixteen hundred bonds aforesaid, with the interest thereon, it is hereby provided and declared, that each and every tract
94 of land comprised in the schedule hereto annexed, and herein conveyed, now is, and shall remain, subject to the liabilities and uses of this trust, until released and discharged, as hereinafter provided, that is to say: On the execution of any deed to which any purchaser may become entitled, the said parties of the second part, may require from such purchaser, bonds of the said parties of the first part, to the

full amount of the purchase-price of the land sold or if any portion of said amount shall have been, or shall then be, paid in money, it shall be the duty of the said parties of the second part to purchase therewith, sufficient bonds to bring to their hands on account of each tract sold, bonds in amount equal to the purchase-money thereof, so that, in no case, shall any tract of land be conveyed by deed of the said parties of the second part, without the surrender and consequent discharge of such bonds to the full amount of the purchase-money aforesaid. On tender of any bond exceeding in amount, or less than the purchase price, the said parties of the second part, may pay to, or receive from the purchaser, such difference as there may be, in money or otherwise, as they may determine. For convenience in selling, the said parties of the second part may issue their scrip for parts or fractional amounts of bonds, on cancelling a like amount in bonds, which scrip may, in such manner as they shall therein provide, be receivable for lands in lieu of bonds.

Fifth. The said parties of the second part shall and will cancel
95 and discharge each and every bond or obligation, and the interest-warrants thereon, which they may receive in payment for land, by defacing the seal of the corporation, and writing thereon such memorandum as will effectually destroy the validity of the same; it being the intent hereof to anticipate the payment of said bonds by the sale and conveyance of said lands, in such manner that the sale of lands and the cancellation of bonds shall proceed pari passu to the end, without diminution of the actual security upon which all or each of said bonds at any time outstanding may rest. On being made by the purchaser of any such tract or tracts of land, in money or bonds as herein required and the due execution and delivery of proper deeds of conveyance, the tract or tracts so conveyed, shall thereby be released and discharged from the operation of this indenture, and held no longer liable for the fulfillment of the conditions hereof; it being intended that such conveyance shall operate as an acquit'ance of the particular tract or tracts so conveyed, and vest in the purchaser an absolute and indefeasible title in fee-simple.

Sixth. That the said parties of the first part shall and will, when required so to do, deliver to the said parties of the second part full and sufficient security, to be approved by them, for the punctual and full payment, by the said parties of the first part, of all the interest-warrants of said sixteen hundred bonds or obligations, as the same shall,
96 from time to time become due and payable. Such security may consist of money in hand, or interest-paying State bonds, or stocks, or of lands to be conveyed in trust to the said parties of the second part. Such security, of whatever kind the same may be, shall be given to the said parties of the second part, under such assignments, conveyances and acquittances, by and in behalf of the said parties of the first part, as will confer upon the said parties of the second part, absolute and summary power of sale, according to their discretion, without process of law. Whenever the said parties of the first part shall fail to pay the interest-warrants aforesaid, or any part thereof according to the terms thereof, all interest-warrants paid by the said parties of the second part shall be charged over to the account of the said parties of the first part.

Seventh. That all moneys coming to the hands of the said parties of the second part, under the provisions hereof, shall, after the payment of the expenses attending the due execution of the trusts hereby created be held by them in trust, and appropriated: First, to the payment of any

lawful taxes and assessments which may be levied upon said lands, and the care and preservation of the same; second, to the payment of any arrears upon interest-warrants, should the said parties of the first part, at any time fail to pay the same; third, to the redemption of the principal of said bonds, until the whole shall be paid and re-
97 deemed, by the sale of said lands, or the application of the avails thereof. On the full payment and redemption of said sixteen hundred bonds, and the interest-warrants thereof, the said parties of the second part, shall render unto the said parties of the first part, a full, perfect, and final account of their doings, and pay over and deliver to the said parties of the first part, their successors or assigns, all moneys, notes, contracts, plats, books, and property of every kind belonging or appertaining to the subject-matter of this indenture, and, also reconvey to the said parties of the first part, all lands then remaining unsold; and thereupon this trust shall cease and determine.

Eighth. That, for the purpose of continuing and securing the due execution of the trusts hereby created, it is declared that all vacancies that may occur in the office of trustee, by death, resignation, or otherwise, shall be filled thus: The first vacancy shall be filled by a majority of the members of the board of trustees as constituted, being in office at the time such vacancy shall take place. The next vacancy shall be filled by the said parties of the first part, and so on, alternately, until the end; and trustees so appointed shall fill the term, and succeed to, and perform all the duties, and have all the power hereby conferred upon members of the board of trustees, herein named or provided for. They shall constitu'e and appoint of their own number, or otherwise, a president of their board of trustees, who shall be a member thereof. and who shall hold his office for such time, and have and exercise such powers and duties as they may confer and appoint, as fully and with like
98 effect as if herein expressed. Such other officers and agents, as shall be necessary to the execution of this trust, may be appointed in such manner as they may determine, rates of compensation fixed, and such rules and regulations made and carried into effect as they may deem necessary.

And this indenture further witnesseth: That the said parties of the first part, for themselves and their successors, do covenant and agree to pay unto the holders of the said bonds or obligations, respectively, the said principal sums of money therein respectively mentioned, as above, and as expressed in said bonds or obligations, according to the true intent and meaning thereof; and that if default shall be made in the payment of the interest upon said bonds or obligations, so that a sum equal to one year's interest on the whole amount of the said bonds or obligations actually issued, and secured by these presents; or if default shall be made in the payment of the principal of said bonds or obligations, that then, and from thenceforth, it shall and may be lawful for the said parties of the second part to sell and dispose of all and singular the said lands hereby conveyed, then remaining unsold, and all benefit and equity of redemption of the said parties of the first part herein, at public auction, giving reasonable and public notice of the time and place of said sale, by publication in the newspaper of the State printer, at Jefferson City, and in a newspaper
99 in each county in which said lands lie, if any there be; and for and in behalf of the said parties of the first part, for that purpose, by these presents, duly authorized, constituted, and appointed, to make and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance, in the law, for the same, in fee-simple; and out of the moneys arising from such sale or sales, to retain the

interest and principal which shall then be due on such bonds or obligation for the benefit of the holders thereof, together with the costs and charges of advertisement and sale of said premises, rendering the surplus (if any there be) to the said parties of the first part, their successors and assigns, which sale shall be a perpetual bar, both in law and equity, against the said parties of the first part, their successors, and assigns, and all other persons claiming or to claim the premises or any part thereof, by, from, or under them, or either of them; and on the happening of any default, as hereinbefore mentioned, in any such payment of interest or principal of said bonds, the said parties of the second part may, in their discretion, enter into and upon, and take possession of, all and singular the railroad and its appurtenances intended to be included herein; and may, by their officers and agents, occupy, control, and operate the same, and take and receive the income and profits thereof, applying the same: first, to the
100 payment of the current expenses of said road and its needful repairs; and next to the prom't payment of the interest on all State bonds which shall have been issued to the said parties of the first part by the State of Missouri, by virtue of the several acts of the legislature thereof hereinbefore referred to; and then to the payment of the interest and principal of the bonds of the said parties of the first part, in such manner as they may deem proper. The possession and control of said railroad by the said parties of the second part, after such default, shall be in the place and stead of like possession and control of the said parties of the first part, under the laws of the State of Missouri, and no more; nor shall any such possession or control be deemed or held to contravene any right of the State of Missouri, by virtue of the several acts hereinbefore referred to; no lien or right of sale is hereby created or intended to be created in behalf of the said parties of the second part, nor of the holders of said bonds, nor any creditors of the said parties of the first part, with respect to said railroad or any matter or thing pertaining or belonging thereto which shall interfere with, take precedence of, or disturb in any way the right of the State of Missouri, as created and defined in the several acts of the general assembly thereof hereinbefore referred to, the provisons of which acts have been duly accepted by the said parties of the first part as binding irrevocably upon the said parties of the first part, and as fixing upon said rail-
101 road a first, prior, and undesturbed lien in favor of said State of Missouri, the intent hereof being to transfer to the said parties of the second part, on the happening of such default, only such right, title, interest, and control as now pertains and is incident to the said parties of the first part by virtue of the laws of the State of Missouri; their power of sale with respect to said railroad to remain in abeyance until the lien of said State shall have been discharged or the rights of the parties herein modified by law of said State; then the power of sale hereinbefore vested in the said parties of the second part, with respect to the lands conveyed and the application of the avails thereof, in manner and form, shall apply and attach to said railroad and its appurtenances, so far as shall be necessary, to redeem any bonds of the said parties of the first part yet outstanding, after the avails of said lands shall have been exhausted. And it is hereby mutually agreed by and between the parties to these presents, that the said parties of the second part, their heirs, executors, or administrators, shall not be answerable for the acts, omissions, or defaults of each other, and that each shall be accountable only for the exercise of reasonable diligence in the management of said trust. And it is further agreed that the said parties of

the first part, their successors, and all and any persons whomsoever lawfully or equitably deriving any estate, right, title, or interest,
102 of, in, or to the premises hereinbefore granted, by, from, under, or in trust for them, shall or will, at any time or times hereafter, upon the reasonable request and at the proper costs and charges in the law of the said parties of the second part, their successors and assigns, make, do, and execute, and cause to be made, done, and executed all and every such further and other rensonable acts, conveyances, and assurances in the law, for the better and more effectual vesting and confirming the premises hereby granted, or intended so to be, in and to the said parties of the second part, their successors, and assigns, forever; and to secure the due execution of the powers herein granted, as by the said parties of the second part, their successors ,and assigns, or by counsel learned in the law, shall be reasonably devised, advised, or required.

In witness whereof the said parties of the first part, the Cairo and Fulton Railroad Company, of Missouri, have caused their corporate seal to be hereunto affixed, and these presents to be signed by Mason Brayman, their president; and the said parties of the second part, the said John Moore, John Wilson, and Albert G. Waterman, trustees, in testimony of their acceptance of said trust, have hereunto set their hands and seals the day and year first above written.

{ SEAL OF C. & F. R. R. } M. BRAYMAN,
President Cairo & Fulton R. Road Co., of Mo.

Attest:
G. R. TEASDALE,
Sec'y C. & F. R. R. Co., of Mo.

103 JOHN MOORE. [SEAL.]
JOHN WILSON. [SEAL.]
A. G. WATERMAN. [SEAL.]

Witness as to A. G. Waterman:
JNO. J. BREBAN.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

I, George W. Lowry, clerk of the circuit court of the United States for the southern district of Illinois, do hereby certify that, on this thirtieth day of April, A. D. 1858, before me, at my office, in the city of Springfield, in said State, came Mason Brayman, the president of the Cairo and Fulton Railroad Company, of Missouri, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as a party thereto; and who being by me duly sworn, deposes and says: That he resides in the city of Springfield, in said State; that he is the president of the said Cairo and Fulton Railroad Company, of Missouri; that the seal affixed to the said instrument, is the corporate seal of the said company and was affixed to the said instrument by authority of the board of directors of said company, for the uses and purposes therein expressed; and that he, by like authority, did subscribe his name as president of said Cairo and Fulton Railroad Company, of Missouri.

In witness whereof I have hereunto subscribed my name and affixed the seal of my said office, at the city of Springfield, the thirteenth day of April, A. D. 1858.

[SEAL.] GEO. W. LOWRY, *Clerk.*

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

104 I, George W. Lowry, clerk of the circuit court of the United States for the southern district of Illinois, do hereby certify that, on this seventh day of May, A. D. 1858, before me, at my office, in the city of Springfield, in said State, came John Moore and John Wilson, trustees of the Cairo and Fulton Railroad Company, of Missouri, who are to me personally known to be the same persons whose names are subscribed to the foregoing instrument, deed of trust, as parties thereto, and acknowledged that they had signed and executed the same as such trustees, as their act and deed, for the uses and purposes therein expressed.

In witness whereof I have hereunto subscribed my name and affixed the seal of my said office, at the city of Springfield, the seventh day of May, A. D. 1858.

[SEAL.] GEO. W. LOWRY, *Clk.*

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, ss:

I, Benjamin Patton, clerk of the circuit court of the United States for the eastern district of Pennsylvania, do hereby certify that, on this fourteenth day of May, A. D. 1858, before me, at my office, in the city of Philadelphia, in said State, came Albert G. Waterman, trustee of the Cairo and Fulton Railroad Company, of Missouri, who is to me personally known to be the same person whose name is subscribed to the foregoing deed of trust, as a party thereto, and acknowledged that he had signed and executed the same as such trustee, as his act and deed,

105 for the uses and purposes therein expressed.

In witness whereof I have hereunto subscribed my name and affixed the seal of my said office, at the city of Philadelphia, the fourteenth day of May, A. D. 1858.

[SEAL.] BENJ. PATTON.

(Here follows the schedule of lands conveyed by this deed of trust and omitted from this transcript, in accordance with agreement of counsel, filed herein on the 21st day of September, A. D. 1871.)

The foregoing schedule of lands, comprised on fifty-two pages, contains, according to estimate, four hundred and five thousand (405,000) acres of land, the deed of trust which is made to secure the payment of the bonds therein referred to, requiring a schedule of four hundred thousand (400,000) acres only; the surplus of five thousand (5,000) acres is added to cover any deficiencies which may occur from errors of description, conflicting claims, or other cause which may make necessary the withdrawal of any tract or tracts from the lists, the uses of this excess being to enable the trustees to release by quit-claim (without cancellation of bonds) as in case of full conveyance, under the provisions of the deed of trust,) any tract or tracts on which error or conflicting claim rests, without in any event reducing the quantity standing as security for the redemption of bonds below four hundred thousand acres.

For verification of the foregoing schedule of lands, and of this dec-

106 laration explanatory thereof, the signature of the president and secretary and the seal of said Cairo and Fulton Railroad Com-

pany, of Missouri, are hereto affixed as of the day and year first above written.

[SEAL.] M. BRAYMAN,
President, &c.

Attest: G. R. TEASDALE,
Secretary.

Letter from W. C. Rayburn.

PRAIRIE C'TY, STODDARD C'TY, MISSOURI,
Feb. the 8th, 1867.

Col. KITCHEN.

DEAR SIR: I received your note a few days ago, and should have *wrote* to you before but was on my way to Cape Girardeau. Colonel, I may have done 'rong, but if I have I thought it was the best could be done, and I hope you will be satisfied. I have sold the bonds. D. B. Miller advised me to sell. He sold, and everybody else that had bonds, I think. The 'hole number of bonds that went from Bloomfield was something over eight hundred thousand. I agreed to take whatever they got, and I only got ten thousand dollars, or am to get by the first of April next. I ought to have *went* to see you before I sold, but hope you will be satisfied. I will write again soon. Let me *hare* from you.

W. C. RAYBURN.

107 *Deposition of O F. Simmons.*

Deposition of Oscar F. Simmons, taken before John H. Stokes, esq., a notary public in and for the county of Dunklin, State of Missouri, at Clarkton, on the 5th day of October, A. D. 1869.

OSCAR F. SIMMONS, of lawful age, being produced, sworn, and examined, on the part of the p'aintiff, deposeth and saith:

I do not think that I ever saw Mr. Kitchen. I know William C. Rayburn, & have known him about three years. He has lived in Dunklin County, State of Missouri, & in the town of Clarkton. I think W. C. Rayburn has lived in the place he now resides upon for two years & a half or three years. I think that he has been residing on the place with other parties who have been living there at the same time. Moore M. Rayburn & Mat. Timberman have lived there a part of the time, & Timbermen still lives there, I think, & do not think that John Timberman has lived on the place since Mr. Rayburn moved on to it. John Timberman & his family & John M. Musse & family lived on & occupied the piece, & I boarded there just prior to the time it was taken possession of by Mr. Rayburn. I lived about three hundred feet from the place upon which W. C. Rayburn resid', & where John Timberman & family resided. I think that Mat. Timberman com'es'ed last spring and made a crop this season. Mat. Timberman is a son-in-law to W. C. Rayburn. Moore M. Rayburn has clan'd the own'rship of said premises when in my presence. Moore M. Rayburn lived a part of his time on the
108 McKnight place, which is a part of the John Timberman farm; how long I can't say. My best recollection is that it is now over an year since Moore M. Rayburn left the McKnight place, since which time he has liv'd in the county, off from the place. I do not remember to have ever seen W. C. Rayburn sell any of the products rai'd on that place. I have never seen W. C. Rayburn receive any pay from any one who

had stayed all night with him. Since the time that John Timberman left there W. C. Rayburn & family have resided on the premises & made their home there. I do not know of any hands being hired to work on & make improvements on said premises. I never paid any hands for labor done on the premises for him that I know of. I do not know that I have ever heard William C. Rayburn, at any time or place, call the place or premises his own; but, on the contrary, I have heard him say the place was not his. Myself and a Mr. John M. Muse were in partnership in January & February, 1867. If I ever knew any note transferred by W. C. Rayburn to Muse & Timberman I have no recollection of it. I never heared W. C. Rayburn say that he had transferred such a note to my recollection. I cannot say how long Moore Rayburn lived in the McKnight place; in fact, I do not know for certain that he ever did live there. Some time in the month of March, 1867, according to the best of my recollection, it was that I heared W. C. Rayburn say that the premises refer'ed to was not his. Within the last
109 year I have also heard W. C. Rayburn say that the place was not his.

O. F. SIMMONS.

Deposition of Z. B. Penny.

Deposition of Zalmu B. Penny, taken before John H. Stokes, esq., a notary public, in and for the county of Dunklin, State of Missouri, at Clarkton, on the fifth day of October, 1869.

ZALMU B. PENNY, of lawfull age, being duly sworn according to law, deposes and says:

I am acquainted with Mr. Soloman G. Kitchen & William C. Rayburn; have known W. C. Rayburn for two years now past—since Sept. 27, 1867. I have boarded at his house nearly all the time since Sept. 27th, 1867, except when absent from home. John Timberman lived an' occupied that place befcre Mr. Rayburn took possession. Since I lived there W. C. Rayburn has lived on the premises. I still board at Mr. W. C. Rayburn's. While boarding there I paid a part of the time ten & a part of the time twelve dollars per month for board. I never stop'd at W. C. Rayburn's, only took my meals there. I paid my board during the time I boarded there, & made the agreement to boa'd with W. C. Rayburn. W. C. Rayburn had control of the premises while I was there. I know Moore M. Rayburn; don't know that he ever claimed or that he now claims any part of the money paid for my board. In the last two years Moore M. Rayburn has lived on the premises about six months. Moore M. Rayburn was livin' on the place when I first went there, but has not liv'd
110 there for more than a year & a half. W. C. Rayburn has been in the possession of the place from the time I went there until this time; that is, he has lived there. The crop raised the first year went there was put into W. C. Rayburn's crib. This year Mat. Timberman & E. S. Malone raised a crop upon it. I keep store with Mr. White on a part of the premises & have occupied the store referred to for more than two years. I do not know from whom my partner, Mr. White, rented the store. I paid the rent for the 1st year to Moore M. Rayburn. For the last year the rent is unpaid. The oats raised on the place was gathered & put in the barn on the place, & used out by the different parties who lived on & worked on the place. E. S. Malone & Mat. Timberman live now at Rayburn's

house. I do not know who they rented it of. I do not know what was in the field op'osite Mrs. Roberts for the year 1867. When I first went there Mr. W. C. Rayburn took in travelers; sometimes they had horses & sometimes they had none. The horses were fed out of the corn & oats raised on the place. When travellers called, William C. Rayburn give the permission to stop & exercised controll. William C. Rayburn lives on the place, & has liv'd there ever since I came here. I have not ever known W. C. Rayburn to collect any money from travellers for staying there. The place where W. C. Rayburn liv's is usually known as the W. C. Rayburn place. I have done business within 50 or 60 yards of his place since Sept. 27th, 1867.

Cross-examination by defendant:

111 Just as said by me a moment ago some say it's the Moore Rayburn place, and some say it is the William C. Rayburn place. I never heard Moore Rayburn or William C. Rayburn say whose place it was. Moore Rayburn helped to gather the crop last year, with others.

Re-examination.

I do not know of Moore M. Rayburn's selling any of the crops raised last year on the place.

ZALMU B. PENNY.

Deposition of E. C. White.

Deposition of Elgin C. White, taken before John H. Stokes, esq., a notary public, in and for the county of Dunklin, State of Missouri, at Clarkton, on the sixth day of October, 1869.

ELGIN C. WHITE, of lawful age, being duly sworn according to law, deposes and says:

I know Solomon G. Kitchen when I see him. I know W. C. Rayburn. I am following the business of merchandizing in *in* the town of Clarkton, Dunklin County, Missouri; have been in that business since Sept. 27, 1867. Mr. Penny & myself are now the owners of the house in which we do business. We were not the owners of it during the 1st year we did business there. We rented the 1st year. I got leave to occupy the house from W. C. Rayburn; had no particular agreement as to the rent. We paid rent for that year; don't recollect distinctly what we paid, but I think it was about eighty dollars. We paid that eighty dollars to Moore M. Rayburn, in this way:

112 We had a store-account against him, & gave his account credit for that sum. Moore M. Rayburn lived in the house now occupied by McKnight, but am not sure that he lived there all the time or not. Moore M. Rayburn was a married man; had a family at that time. W. C. Rayburn dealt with me during the same time on a credit. No part of the eighty dollars of rent went to the payment of W. C. Rayburn's account. We purchased the house we done business in after the 1st year. We 1st talked to W. C. Rayburn about buying the place. My recollection now is that the reason I spoke to him about it was because he had told me that Moore M. Rayburn wanted to sell the whole lot, in all, about two acres, including his house, two acres being a lot seperate from the John Timberman farm. I paid the money for the lot to W. C. Rayburn. The reasons that I know that the lot was not

a part of the John Timberman farm, was that it was sold to D. S. Butt by Muse & Timberman, & by D. S. Butt to Moore M. Rayburn. W. C. Rayburn has liv'd where he now lives since last winter, was two years. He lived on, occupied, & still lives on said place. When spoken of, it is called W. C. Rayburn's place. I don't 'now of any one exercising ownership over it except him. There has been crops raised on the place ever since he lived there. All that I have noticed the crops have been harvested or gathered on the place there where W. C. Rayburn lives. I don't have any recollection of any one buying any of the corn, wheat, or rye raised on the place. There are mules, horses & cattle on the place; have seen these horses & cattle fed; have seen W. C.
113 Rayburn feeding them out of the crib or barn. W. C. Rayburn, E. L. Malone, & Mat. Timberman, all claim a part of the horses, mules, & cattle. I do not know of W. C. Rayburn raising a crop on any other place than the one referred to since he moved here. John Timberman lived on the place now occupied by W. C. Rayburn, before Rayburn moved there. It was but a few days after John Timberman moved out, until W. C. Rayburn moved in, perhaps the same day. I have heard him (W. C. Rayburn) say that he bought this land, and sold Moore M. Rayburn's land & crop to raise the money to pay the sheriff for it. The place I have reference to is the one on which W. C. Rayburn resides, & is situated adjoining to the town of Clarkton, Dunklin County, in the State of Missouri, & is commonly called the town of Clarkton. I have seen travellers stopping with W. C. Rayburn at different times since he has occupied said premises. I have known him to charge persons stopping with him, & collect the same. The house I do business in is within thirty or forty yards of the residence of W. C. Rayburn. I think Moore M. Rayburn resided with W. C. Rayburn, since W. C. Rayburn moved down here, but can't say how long. I don't think that Moore M. Rayburn has lived on the place for the last two years.

Cross-examination:

Since the land was sold by sheriff's sale, I don't know that I heard anybody speck of the ownership of the land, except the family connection.
114 May have heard others speak of it. I heard the family connections call it Moore Rayburn's farm. I saw Moore Rayburn on the farm at work; he made a crop there. I have known the place since the fall of 1859. I have lived close by it. At the time W'm C. Rayburn took possession of the place it was considerably out *out* of repair; the fences down, the fencing around the yard I included with the balance. I can't tell what fix the house was in, but I know the house was prized up since W'm C. Rayburn went to live there. The gallery floor has also been fixed up by W'm C. Rayburn.

Re-examination:

I don't know that the land was sold by the sheriff except by hearsay. I have seen Moore M. Rayburn working on the place since he raised a crop. He raised a crop there on a part of the farm in 1867. My recollection is that a part of the time Moore M. Rayburn lived *lived* with W. C. Rayburn, & a part of the time on the McKnight or Butt's place, while he was engaged raising a crop. The crop raised on the farm when it was cultivated by Moore Rayburn was housed in the barn on the place where W. C. Rayburn lives. I have no recollection of Moore M. Rayburn mooving his corn from there. I think Moore M. Rayburn moved away from the Butt's or McKnight place sometime in the fall or

winter of 1867. When he moved, he went about one mile and a half from there.

E. C. WHITE.

115 *Deposition of M. Timberman.*

Deposition of Mathew Timberman, taken before John H. Stokes, esq., a notary public, in and for the county of Dunklin, State of Missouri, at Clarkton, on the sixth day of October, 1869.

MATHEW TIMBERMAN, of lawful age, being duly sworn according to law, deposes and says:

I know Kitchen when I see him; am acquainted W. C. Rayburn. The relationship existing to him is, I am a son-in-law of him; am cultivating a part of the farm on which Rayburn lives. I can't say that I rented the farm from any one. There was nothing said about rent. I was wanting the place to cultivate, & W. C. Rayburn told me that I could come & live with him, and I could have, or get, as much land there as I wanted to *to* cultivate. This occur'ed in the year 1869.

Cross-examination declined.

MATTHEW TIMBERMAN.

Deposition of J. M. Muse.

Deposition of John M. Muse, taken before John H. Stokes, esq., a notary public in and for the county of Dunklin, State of Missouri, at Clarkton, on the twelfth day of October, 1869.

JOHN M. MUSE, of lawful age, deposes & says:

I know Soloman G. Kitchen and Martha Kitchen, his wife, and also W'm C. Rayburn. I know where W'm C. Rayburn now lives, and he has lived there since about the year 1867, and about the month of March of that year. I know who lived on that place where W'm C. Rayburn now lives, before he moved there. It was John Timberman. John Timberman sold the place to Jacob V. Rayburn. John Timberman received payment for said place from Jacob V. Rayburn in
116 a draft drawn by Weber, and payable to the order of H. H. Bedford, and by him indorsed. I had that d'ft in my possession, and sold the same to the 4th National Bank, in St. Louis. I received that draft from either Jacob V. Rayburn or W'm C. Rayburn—I do not recollect which. They were both present at the time; don't recollect what the draft or check was given for; heard some one say it was given for railroad bonds, but don't recollect who. I do not recollect whether it was either one of the Rayburns, or some one else. To the best of my recollection it was seven thousand dollars—the am't of the draft or check of which I have spoken. Since the time spoken of, (March, 1867, or about that time,) W'm C. Rayburn has made his home on the same place. W'm C. Rayburn has lived on the place and in possession of it, so far as I know. There has been crops raised on place since that time, each year, by W'm C. Rayburn and others. Moore M. Rayburn disposed of the cotton-crop; and, as to the disposition of the crops of corn and cotton since that time, I don't know how they were disposed of; think the corn-crop was consumed by W'm C. Rayburn and others on the premises. Moore M. Rayburn sold the cotton, or a portion it, to O. F. Sumers & Co., of which firm I was a member. O. F. Simmons & Co. were selling goods at that time—goods were purchased from us

and charged to account of Jacob V. Rayburn; and my recollection is, that a portion of the cotton sold us by M. M. Rayburn (O. F.
117 Sumers & Co.) was to pay the account of Jacob V. Rayburn. Jacob V. Rayburn is dead; think he got killed some time in the fall of 1867. W'm C. Rayburn & family have lived on the place bought of John Timberman by Jacob V. Rayburn since March, (or about that time,) 1867. Some of the goods bought & charged to Jacob V. Rayburn was bought by himself & his orders, and some of the goods were bought by W'm C. Rayburn and his family. Jacob V. Rayburn authorized us (O. F. Sumers & Co.) to let W. C. Rayburn and family have any goods that they might want, and charge same to him. At the time that Jacob V. Rayburn was killed he stayed a portion of the time at the Watson farm, (in Dunklin Co., but said farm is now in Stoddard County;) but my understanding , , his home was at his father's, or they all lived at the same place. Jacob V. Rayburn was a single man, and he called the place where his father lived his home. The only knowledge I have of this place being his home, I have often heared him speak of it as home. When he was killed, I helped dress him there, and his clothing was there. I would suppose he was about 23 or 24 years of age at the time of his death.

Cross-examination:

Moore M. Rayburn owns the place I have been speaking of now. I know Moore M. Rayburn. I think owned the place since March tenth, 1868.

Re-examination:

118 I only know the above questions answered, put on cross-examination, from the fact that Reuben P. Owen told me so, and I saw the receipt given by said Owen to Moore M. Rayburn for cost of suit.

JOHN M. MUSE.

Deposition of R. P. Owens.

Deposition of Reuben P. Owen, taken before Eli O. Sanford, esq., a justice of the peace in and for the county of Stoddard, and State of Missouri, at Bloomfield, on the eighth day of April, 1870.

REUBEN P. OWEN, of lawful age, being produced, sworn, and examined, on the part of the defendant, deposeth and saith:

I am acquainted with Solomon G. Kitchen & Martha Kitchen, pl'ffs, & W'm C. Rayburn, defendant. It is my impression that def't Rayburn told me he had bought a farm from John Timberman, near Clarkton, Mo. Def't told me this about the winter or spring of 1867. I believe that I wrote the deed from John Timberman, conveying the farm to the boy, Jacob V. Rayburn. As regards the sheriff's sale, in the fall of 1865, I had some claims to collect against Muse and Timberman, & in favor of H. & R. B. Whitemore & Co., of St. Louis, Mo. As attorney, in 1865, I brought suit in the Stoddard County circuit court against Muse & Timberman, and got judgment against them in two cases in favor of H. & R. B. Whitemore, of St. Louis, for about the sum of twelve hundred and seventy (1,270) dollars. About the month of September, A. D. 1866, I had execution issued on both judgments, and sent
119 the sheriff of Dunklin County, with instructions to levy on any property belonging to John Muse or John Timberman, (Muse &

Timberman.) In the spring of 1867 I went to Dunklin County, & there ascertained what property was levied upon, & found that the two executions had been levied on a portion of the land conveyed by Timberman to Jacob V. Rayburn, & also some other lands belonging to John Timberman & John Muse.

On my return from Kennett I stopt at Mr W'm C. Rayburn's & told him that the executions in favor of Whitemore & Co., had been levied on a part of the lands conveyed by Timberman to his son Jacob V. Rayburn. W'm C. Rayburn & myself then went to see John Muse, if he could make any arrangement to settle off the debts without selling the lands. He made no arrangements to pay the debts at that time. In September, 1867, during the circuit court of Dunklin County at Kennett, Mo., the land levied upon was sold under the executions, and I purchased the lands at sheriff's sale. I told William C. Rayburn, and I also told John Muse that if they would pay me the amount of debts, interest, and costs of the two executions that I would make a quit-claim deed back to the lands. I also agreed to wait with them until the 1st day of January next following for the money. William C. Rayburn told me that i Muse did not pay the money, his son, Moore Rayburn, had some money coming to him from O. F. Summers & Co., for cotton, and that he could or would use that in the payment of the claim, provided Muse did not make some arrangement to pay the money. About the 11th
120 day of December 1867 Muse came to me here in the town of Bloomfield and wished to know if I would take checks or drafts on J. & S. Albert of Cape Girardeau, Mo., for the amount of the debt, drawn by O. F. Summers & Co. I told him I could not do that, but any arrangements he could make with Whitemore & Co., of Saint Louis, Mo., would be all right with me. Muse told me he was going to St. Louis and would try to make some arrangements with them.

I wrote a letter to Whittemore & Co., and sent it by Muse, giving them a statement of the debt, interest, & costs. About the 21st of December, Whittemore & Co., wrote to me that Muse had made an arrangement with them to pay off the debts for which the lands was sold *for*, and said that he, Muse, had given them two drafts drawn by O. F. Summers & Co., on J. & S. Albert, of Cape Girardeau, Mo., one at 60 days, for $719.12, and the other at 90 days, for $725.00, which was the amount of the debt, less my fees for collection. Whittemore & Co., wrote to me after the last draft had matured that the drafts had been paid.

Question by pl'ff. Who paid you your commissions and costs for collecting?

Answer. William C. Rayburn paid me. I paid the sheriff no money when I bid off the lands except the costs of suit and lev'y, as I bid off the lands for my clients, H. & R. B. Whittemore & Co., if they chose to take it. There was about two hundred acres of other lands, besides the Rayburn place, sold under the executions, which brought about
121 $265.00. After I was informed that the drafts had been paid, I made a deed to all the lands which had been sold under the executions to Moore M. Rayburn, at the request of W'm C. Rayburn, John Timberman, & John Muse.

Ques. Were you acquainted with Moore M. Rayburn before the making of this deed?

Ans. I was not intimately acquainted with him, but I knew him when I saw him.

Ques. Did Moore Rayburn before that time ever say anything about the purchasing or owning of that land?

Ans. I have no recollection of his ever saying anything about it.

Ques. How long before the making of the deed did you last see Moore M. Rayburn?

Ans. I don't recollect. I might have seen him when I was down that trip, but don't recollect.

Ques. To whom did you deliver the deed when you made it?

Ans. To the best of my recollection I gave it to W'm C. Rayburn—I think that is correct.

Ques. Where were you when you delivered the deed to W'm C. Rayburn?

Ans. To the best of my recollection I delivered the deed in the town of Clarkton to Rayburn. The farm lays near or adjoining the town of Clarkton. When I vis'ted Clarkton, at & about that time, I generally stopt with Rayburn. W'm C. Rayburn was living in the place sold, as I always understood, by Timberman to Rayburn.

122 Ques. Who did you pay your bills to when you stayed there?

When I paid them at all, I generally paid them to W'm C. Rayburn; but usually he did not charge me anything.

Ques. About what was the age of Moore M. Rayburn?

Ans. From his appearance I would suppose he was 22 or 25 years old. I don't know his age only from appe'rances.

Ans. How long have you lived in Stoddard County?

Ans. I have lived here 29 years last September, except from 1st Dec'r, 1864, to middle of August 1865; was then living in Carondolet, Mo.

Ques. What *was* confederate bonds worth in the latter part of 1864, in 1865, in 1866, & 1867?

Ans. I don't know; was not here in latter part of '64, or fore part of '65, till August.

Ques. What was confederate money worth in the latter part of 1865?

Ans. I don't know that it was worth anything; heard nothing said about it; there was none in circulation.

Ques. State, if you know, what S. G. Kitchen sold his interest in 2,200 acres of land at & near St. Luke, in the spring of 1866—how much per acre?

Ans. Don't recollect how much land Mr. Kitchen sold; him & D. B. Miller owned a good deal of land near St. Luke in partnership, & sold a considerable amount at four dollars per acre. That sale was made in the town of Bloomfield.

123 Ques. Was W'm C. Rayburn in Bloomfield at the time the sale was made?

Ans. I am under the impression he was; but I don't recollect that he was present at the time of the contract.

Ques. How far did W. C. Rayburn live from Bloomfield at that time?

Ans. He lived about 20 miles from here on a farm belonging to the estate of Nations.

Ques. Was you at Rayburn's frequently during that year?

Ans. I think I have stopt there & got my dinner & stayed all night once, and may-be, twice.

Ques. What were the circumstances of the family?

Ans. He was tolerably comfortably fixed in his house; about as ordinary farmers, in his house. He had ordinary comfortable beds for this country. He was not very finely fixed nor very poorly fixed in his house. Can't say that I was acquainted with his pecuniary circumstances in 1867; knew nothing about his property. In 1866 I think he had six

children living with him; don't recollect whether he had any more children or not.

R. P. OWEN.

Deposition of A. C. Carter.

Deposition of Allison E. Carter, taken before Eli O. Sanford, esq., a justice in and for the county of Stoddard and State of Missouri, on the ninth day of April, 1870.

ALLISON E. CARTER, of lawful age, being duly sworn according to law, deposeth and saith:

124 I am acquainted with Solomon G. Kitchen and Martha A. Kitchen, plaintiffs, and William C. Rayburn and others, defendants, in this cause. I he'rd propositions made between John Timberman and William C. Rayburn in regard to the purchase of the farm at Clarkton, of John Timberman. I was with John Timberman and William C. Rayburn about two days while they were trying to trade about the farm, and they finally agreed on a sum near five thousand dollars for the farm. This trade was made about January, 1867. I he'rd William C. Rayburn say that he let John Timberman have a draft for more than the five thousand dollars. William C. Rayburn told me that he got the draft from Henry H. Bedford, for railroad bonds that he had let Dan'l B. Miller or Henry H. Bedford have, or both—they had paid him ten thousand dollars for the railroad bonds, (said bonds being the Cairo & Fulton Railroad bonds,) and that they were to give him as much more as they could make the railroad bonds worth to them, after defraying all expenses; and that if they realized more than ten thousand dollars, the balance was to be placed to the credit of Solomon G. Kitchen. William C. Rayburn told me that he had paid Solomon G. Kitchen ten thousand dollars—about that amount in confederat' money for land in Stoddard County, near Saint Luke, and that he came to Bloomfield to have a settlement with S. G. Kitchen and get a

125 deed to the land, and that S. G. Kitchen had made some other arrangements and told him if he would go home with him, he, Kitchen, would give him Cairo & Fulton Railroad bonds enough to secure him that amount of land. I do not recollect the amount of bonds that W. C. Rayburn told me he had got from S. G. Kitchen, at that time. I was at the farm W'm C. Rayburn bought of John Timberman, about one week ago. W. C. Rayburn told me had rented the farm out for the year. He did not tell me the amount of rent he got. I think, from my knowledge of the farm, that the rent would be worth between four or five hundred dollars a year at least. I was at the farm frequently in the years 1867, 1868, and 1869, and Willam C. Rayburn was occupying the farm during the crop-seasons of the three years; that he did not go on to the farm until in the year 1867, and left the farm some time in the year 1869.

Ques. by pl'ff. Are you acquainted the family of William C. Rayburn?

Answer. I am.

Ques. How many children had Mr. W'm C. Rayburn, in the year 1867?

Answer. He had two grown daughters, and I think two small daughters, and I think he had two grown sons that was there part of the time. Jacob V. Rayburn, in the year 1867, had an interest

126 in and was run'ing what is known as the Nations farm, in the

lower part of Stoddard County, Mo., and some time during the summer he sold his interest in the crop and was making preparations to go away—to move to Texas. He started, I think, and come back. I am acquainted with Moore Rayburn. At about the time the trade was made between William C. Rayburn and John Timberman, he was living near the Nations farm. Some time during the year 1867 he moved to a place within two or three miles of Clarkton, and that I have been at W'm C. Rayburn's when he would visit there with his family and stay all night, and I have seen him leave there and start home from W'm C. Rayburn's. I was living in Stoddard County, Mo., in the year 1865.

Ques. What was the cash value of confederate money or bonds at that time, (in the year 1865?)

Answer. I do not know that it was worth anything, nor do I know that it was not worth anything. I do not know of any offering for sale at that time. I am satisfied in my own mind that it was not worth anything, for if it had been I would have sold some that I then had on hand.

A. E. CARTER.

Deposition of R. W. Carter.

Deposition of Robert W. Carter, taken before Eli O. Sanford, esq., a justice of the peace in and for the county of Stoddard and State of Missouri, at Bloomfield, on the ninth day of April, 1870.

ROLERT W. CARTER, of lawful age, being duly sworn according to law, deposeth and saith:

127 I am acquainted with Solomon G. Kitchen and Martha A. Kitchen, the plaintiff, and William C. Rayburn and family, the defendants.

Ques. by pl'ff. Did you present a receipt to Mr. W'm C. Rayburn for some Cairo & Fulton Railroad bonds?

Answer. I did.

Ques. State what he said.

Answer. He said he had disposed of the bonds, and that Mr. H. H. Bedford, his agent, had got them from him to sell, and that it was an understanding between him and Mr. Bedford, that Col. S. G. Kitchen was to have all the bonds brought over ten thousand dollars. He said his reason for retaining the ten thousand dollars was that Col. Kitchen owed him ten thousand dollars, that he, Rayburn, was likely to be swindled out of. He said he had bought some lands from Col. Kitchen during the war, and had paid him about ten thousand dollars in confederate money for it, & that Col. Kitchen did not make him a deed for it, but had left with him, to make him safe, five thousand dollars in Cairo and Fulton Railroad bonds, and that he afterwards found out that those bonds were almost worthless, and that he had retained the ten thousand dollars out of the sale of those Cairo & Fulton Railroad bonds,

128 for which he had given Col. Kitchen his receipt, to make himself safe in the money he *he* had paid Col. Kitchen for the land, and he said he thought it nothing more than right for him to get back his ten thousand dollars he had paid Col. Kitchen for the land, and thus that Col. Kitchen should have the balance of the proceeds of the bonds.

Question. How many bonds was there in question?

Answer. The amount of the bonds for which he, Rayburn, had given Col. S. G. Kitchen his receipt for, to the best *best* of my recollection, was one hundred and nineteen thousand dollars, with interest. The receipt referred to I then had in my pocket. I went to see Mr. W'm C. Rayburn, as agent for Col. S. G. Kitchen, to get the bonds from Mr. Rayburn.

To the best of my recollection, all this conversation took place between myself and W'm C. Rayburn, about the first of April, A. D. 1867.

I was not acquainted with his pecuniary circumstances.

R. W. CARTER.

Deposition R. F. W. E. Weber.

Deposition of Rudolph F. W. E. Weber, taken before Eli O. Sanford, esq., a justice of the peace in and for the county of Stoddard and State of Missouri, at Bloomfield, on the ninth day of April, 1870.

RUDOLPH F. W. E. WEBER, of lawful age, being duly sworn according to law, deposeth and saith:

I am acquainted with Solomon G. Kitchen and William C. Rayburn.

129 Ques. State what you know about H. H. Bedford and Dan'l B. Miller getting a lot of Cairo & Fulton Railroad bonds from William C. Rayburn.

Answer. William C. Rayburn told me that he let Henry H. Bedford have one hundred and twenty-three (123) bonds. Each bond was for one thousand dollars nominally, with interest-coupons attached, and that he got about ten thousand dollars for the bonds.

Ques. State what those bonds sold for in Saint Louis.

(Question objected to by the def't' att'y. Objection overruled by the court.)

Answer. I paid fifteen cents on the dollar here for the bonds nominally, and sold them for twenty-six thousand three hundred & forty ($26,340.00) dollars in Saint Louis—for the face of the bonds.

Quest. State the manner in which you paid for those bonds.

Answer. I paid for them by giving two notes, one note, three months after date, for $6,725.00, and one note six months after date for $6,725.00, and by paying five thousand dollars cash, independant of the notes.

Ques. State when that cash payment was made.

Answer. I made the cash payment on the 21st day of December, 1866, by check on 4th National Bank Saint Louis, Mo., which check was drawn in favor of Henry H. Bedford.

130 Ques. State how the first note was paid.

Answer. I paid it to Mr. Muse, (son-in-law of John Timberman,) by giving him an order to my brother, Emile Weber, in Saint Louis, Mo., by whom it was paid. This note was paid about the month of March, 1867.

Ques. State how the last note was paid.

Answer. I have paid it to Henry H. Bedford. I have known William C. Rayburn since the fall of 1866, to the best of my recollections.

R. P. Owen, attorney for defendant, declines making any cross-examination.

RUDOLPH F. W. E. WEBER.

Deposition W. G. Pheelan.

Deposition of William G. Pheelan, taken before Eli O. Sanford, esq., a justice of the peace in and for the county of Stoddard and State of Missouri, at Bloomfield, on the ninth day of April, 1870.

WILLIAM G. PHEELAN, of lawful age, being duly sworn according to law, deposeth and saith:

I am acquainted with the parties of the suit. I had a note from Arkansas for collection, against William C. Rayburn and somebody else, whose name I do not recollect, given to a Mr. Miller, of Little Rock, Ark., for about the sum of three hundred dollars, and William C. Rayburn told me he was not worth a cent in the world—had no property; that he got broke up during the war. He said, further, that I could examine everything and find what he stated to be
131 so, but that he believed he could borrow one hundred dollars, and pay me on it. He did pay me one hundred dollars, and I gave him up the note, because, from all that I could ascertain, he was worth nothing beyond it. He told me, in the year 1866, (while he lived on the Nations place,) that he was worth nothing. He also told me that he paid for the Timberman place out of the money he got for the railroad bonds. He said further that he got the railroad bonds from Martha A. Kitchen, and that he gave her a receipt for the same and that he feared said receipt would ruin him.

W. G. PHELAN.

DEFENDANT'S EVIDENCE.

Deposition of Jno. F. Starr.

Deposition of John F. Starr, taken before Marcus S. Crabtree, a justice of the peace in and for the county of Stoddard and State of Missouri, at Bloomfield, on the twenty-seventh day of October, 1869.

JOHN F. STARRS, of lawful age, being produced, sworn, and examined, on the part of the defendants, deposeth and saith: I am acquainted with Mr. Kitchen & Mr. W. C. Rayburn, & slightly acquainted with Mrs. M. A. Kitchen. States that he was present at the residence of Daniel B. Miller, near Bloomfield, Stoddard County, Missouri, some time in the month of March, A. D. 1866, where Soloman G. Kitchen & said Miller had met for the purpose of making a compromise with their creditors by a transfer of lands to them in payment of their joint indebted-
132 ness; and, amongst the lands which it was desirable to turn over to the Union Bank, one of their largest creditors, was a lot of lands situated in the southern part of Stoddard County, known as the St. Luke lands; the undivided half of which had been transferred by Mrs. S. G. Kitchen to W. C. Rayburn, to the amo'nt of twenty-two hundred acres; and Miller stated to Kitchen that he had better make some arrangement with W. C. Rayburn, to get the undivided half of said twenty-two hundred acres back, so that it could be turned over in payment of these debts to the said bank, as the bank was unwilling to take an undivided interest. Solomon G. Kitchen asked Mr. D. B. Miller if he would see Mr. Rayburn for him, as he disliked to break or mention the matter to him, as he, Rayburn, had paid him for said lands; and after Mr. Miller had talked with Mr. W. C. Rayburn, & learned that he, Rayburn, was willing to make any arrangement that was just & right in the matter,

Soloman G. Kitchen stated to Mr. Rayburn that he would give him railroad bonds sufficient to secure him in the sum of ten thousand dollars, upon the condition that Mr. W. C. Rayburn would give up his claim or obligation on him for said lands; and stated that with the bonds he, Rayburn, could get more land equally as good & in a better body or locality. Think that the lands relinquished by W. C. Rayburn was worth at least ten dollars per acre, then and now. After Mr. Rayburn had got some railroad-bonds of Soloman G. Kitchen—think it was in the month of May, A. D. 1866—W. C. Rayburn placed in my hands a lot of
133 said bonds, to take to Mississip'i County to see if I could lay them on land, or enter lands with them. I did all that I could to obtain lands for them and to ascertain what they were worth. I could not get lands for them or sell them for anything. I know that Mr. W. C. Rayburn made considerable inquiry about getting lands for the bonds, & I know that he was offering to sell them. I do not know of any offer being made to him for the bonds until I learned that he had sold said bonds to H. H. Bedford, for the sum of ten thousand. I then thought & still think it was the best that W. C. Rayburn could have done with the bonds; know that Rayburn went to great trouble in getting up the numbers of lands, & in trying to get said lands for the bonds which he held, & was not able to do it; do not know the exact number of the bonds held by W. C. Rayburn, but think it was about one hundred and twenty two or three.

J. FRANK STARRS.

Cross-examined by plaintiffs:

I understood that the undivided half of the St. Luke lands were transferred to W. C. Rayburn, by hearing a conversation between D. B. Miller, Solomon G. Kitchen, & W. C. Rayburn. They were all there together a part of the time. At first the conversation was between Kitchen & Miller, and then W. C. Rayburn came in. After Miller & Kitchen had talked the matter over, Miller went out, & then he & W. C. Rayburn came in, and the conversation was resumed. Mr. Kitchen stated that he would be amply able to secure him for the loss, or for his
134 surrendering his claim on the St. *Louis* lands, by a transfer of railroad-bonds, with which he would be able to enter more & better lands. I saw no transfer of bonds from Kitchen to Rayburn. When Miller Rayburn came in, the conversation was just as stated. I know that Rayburn relinquished his interest in said lands, from what they said. Mr. Rayburn said that he was willing to do anything he could to accommodate them, but still he wanted to be safe. Mr. Kitchen said that it might be doubtful whether he could make him a good deed, but that he would secure him by giving him railroad-bonds which would enable him to enter more and better land. I never saw Mr. Kitchen let Mr Rayborn have any bonds, nor Kitchen never told me that he let him have any. I know that Rayboun went to great trouble in getting up the numbers of the land from the fact that he had collected the numbers of a great portion of the railroad-lands of Stoddard and Dunklin County, showing the condition and improvements of said lands. I know also, that he came up here several time'. I wrote to him to come for that purpose. In the hands of Mr. Rayboun, I saw a good part of the bonds. Mr. Rayboun got me to try to get lands for the bonds, and for that purpose, I went to Mississippi County, to meet Brayman and others and was unable to get lands for the bonds. Mr. Rayboun let me have the bonds, the number I do not remember. I think I have a memorandum, at home, of them; each bond, I think, called for one thousand

dollars. I have no recollection of the number of the bonds that
135 Mr. Rayborn let me have at any one time. I have a memorandum at home. I cannot say precisely the amount of bonds I saw in Mr. Rayborn's hands. I cannot find the memoranda to which I referred yesterday. I have looked for it but have not found it. What I meant yesterday when I said that Mr. Rayburn had relinquished his interest in the St. Luke land to Mr. Kitchen that from the fact that Kitchen let the Union Bank have a part of the land, and the other was sold to pay Kitchen's debts; and also, I understood that William C. Rayborn let Kitchen have a bond. I never saw Rayborn let Kitchen have any bond. I do not know that there ever was a bond of the kind in existence, only from hearsay.

J. FRANK STARRS.

Deposition of W. C. Rayburn.

Deposition of William C. Rayburn, taken before Marcus S. Crabtree, esq., a justice of the peace in and for the county of Stoddard and State of Missouri, a' Bloomfield, on the twenty-eighth day of October, 1869.

WILLIAM C. RAYBURN, of lawful age, being produced, sworn, and examined on the part of the defendants, deposes and saith:

That I am one of the defendants in the above-entitled cause.

Some time in March, 1866, in the town of Bloomfield, Solomon G. Kitchen told me if I would go home with him, in Arkansas, he would place a sufficient amount of the bonds of the Cairo & Fulton Railroad Company in my hands to secure me in the price of the undivided
136 half of twenty-two hundred acres of land, lying at St. Luke, in Stoddard County, Missouri, which I owned at that time, and which Solomon G. Kitchen wanted for the purpose of turning them over to the Union Bank of the State of Missouri, to pay his debts. I stated to Kitchen that I did not want to be hard with him; that I wanted something out of which I could realize money, as my family needed it. Kitchen told me that I could make the money at any time out of the bonds; that they were good. I told him then that I would be at his house in a very short time. Kitchen then lived in Green County, Arkansas. During this conversation I stated to Kitchen that I knew nothing of the value of the bonds; that his words were good to me. It was about the last of March or the 1st of April of that year that I went Kitchen's house, in Arkansas, 1866. Kitchen then told me that he had a lot of bonds that he wanted me to enter land in Missouri; that he wanted me to enter the land in my own name, and sell it, and that he did not want his name known in the transaction, and wanted to know what I would be willing to do this for. He told me that I would have no trouble, only to examine the land and get the numbers. I told him I thought I could do it for one-eight' of the whole amount. He then gave me five bonds to enter land in lieu of the St. Luke land that I had let Kitchen have. He told me that I could take these five bonds and enter the whole elevin hundred acres, paying all expenses, anywhere about
137 Clarkton, Dunklin County, Missouri; and that he had a lot of bonds, over one hundred in number, that he would let me have and take my receipt for; that he wished me to enter land in my own name with , in accordance with our agreement. I told him that I knew there were valuable lands around Clarkton, and he told me that those lands I knew, or a portion of them, were railroad lands, and sub-

ject to be entered with those bonds at this time. I told Solomon G. Kitchen that I did not know anything about the bonds, nor the railroad land or R. R. company, and that I did not know whether the five bonds he had laid out for me would enter me the eleven hundred acres of land and pay all expenses or not. Kitchen told me they would, and if they did not, he said, pay yourself out of the bonds he was going to give me and take my receipt for. He told me also that he would furnish me with maps and plats of all the railroad lands in the counties of Dunklin, Stoddard, and Mississippi and Butler; in othe' words, all the lands of the Cairo & Fulton Company which was subject at that time to be entered by these bonds in the State of Missouri. I had confidence in what he told me to be facts that I had no means of knowing myself. I agreed to the proposition and took the five bonds.

At the same time he told me to get all the numbers of the good lands, even more than I had bonds to cover; that he would furnish me
138 with two hundred bonds more of one thousand dollars each. He then wrote a receipt, in his wife's name, for one hundred and nineteen bonds, with which I was to enter Cairo & Fulton Railroad lands in my own name, sell said land' and turn them into money, reserving one-eight' of the proceeds, after all expenses were paid, and turn him over the balance. Kitchens then placed in my hands maps and plats showing the railroad-lands of Stoddard, Dunklin, Butler, and Mississippi counties. I then signed that receipt spoken of, made in his wife's name. He then gave me the one hundred and twenty-four bonds. I saw that they were of one thousand dollars each, the coupons thereto attached. I then went home with the maps, plats, and bonds, and went to work hunting up the numbers of the lands in Missouri. I spent a good deal of time, trouble, and some money, and employed another man to assist me. Some time afterwards I made enquiry of every person that I thought knew anything about these railroad lands, and I never have been able to find out how I could lay the bonds on lands. I then tryed to sell the bonds and convert them into money. I found no one that would purchase up to this time. I think this was some time in July, 1866.

Kitchen came to my house. I told Kitchen that I didn't believe I could do anything with the bonds. He told me it would be only a short time then till the railroad company would organize; for me to
139 continue to get up numbers of land, and be ready. He then called on me for my bond he had given me for the undivided half the twenty-two hundred acres of St. Luke land, which was my interest therein. I gave him the bond, and saw him put this bond in the fire. He then and there again assured me that the five bonds would satisfy me, and if they did not, I could use a sufficient number of the other bonds in my possession to pay myself for the undivided half of the St. Luke lands, valued at ten thousand dollars by Kitchen himself.

I placed at one time 80 of these bonds in the hands of Henry Miller, of Bloomfield, requesting him to find out whether any money could be realized out of the bonds or not, having previously ascertained myself that lands could not be entered with the bonds.

Henry Miller told me, after he had the bonds in his hands for some time, that he thought Weber would give thirty-five dollars per bond. I then went to Weber myself and asked him what he would give for railroad bonds. Weber told me that he did not want to buy. I then asked him if he had not offered Henry Miller thirty-five dollars per bond. Weber told me that he did not; that he (Weber) had railroad bonds himself to sell and would take from me twenty-five dollars

140 p'r bond. I then placed six bonds in H. H. Bedford's hands with the numbers of the railroad lands. I wanted him enter with said bonds, with instructions to get all the information he could as regards the possibility of laying them on lands or bringing them into market. Mr. Bedford after a time returned me the bonds.

I also placed about forty of these bonds in the hands of John F. Starrs, with the numbers of railroad land I wanted him to enter with said bonds, with instruction to get all the information he could as regards the possibility of laying them on lands or bringing them into market, and to enter land, if he possibly could do so, with said bonds. Some time afterwards he returned all these bonds.

I then, with the effort I had made, become very much discouraged, and come to the conclusion that I could not realize anything out of the bonds. I think, it was sometime in December, 1866, H. H. Bedford made me an offer of ten thousand dollars for the one hundred and twenty-four bonds. I sold them to him for that sum and he payed me the money.

Before I sold these bonds to Bedford I saw a proposition made by Kitchens, stating that he was willing to take eight thousand four hundred and twenty-three dollars, for one hundred and sixty-eight railroad bonds.

I think this was sometime in August, 1866. Under these and
141 other consideration I though' it best to sell for the ten thousand dollars. With a part of the proceeds I got for those bonds I perchased the lands from one John Timberman, mentioned in the plaintiff's amended bill, for my son, J. V. Rayburn, and took the deed in his name, and which was intended by me in good faith as an advancement to him.

Some time after that I understood that said lands were bound by a judgment against Timberman & Muse.

Some time in the month September, 1867, I saw the land advertised for sale by the sheriff of Dunklin County, and at the September term of the circuit court of Dunklin County said lands were sold by the sheriff of Dunklin County, and at said sale Reuben P. Owen become the purchaser of said lands, and at the March term of the said court, in 1868, said sheriff executed to the said Reuben P. Owen a deed for said lands. In May, 1868, Reuben P. Owen sold these lands to Moore M. Rayburn, for which he paid every dollar of his own effects, and that no part of the proceeds of the bonds sold to H. H. Bedford went as payment towards the lands thus purchased by Moore M. Rayburn. It was afterwards discovered that forty acres of the same lands sold by John Timberman, as above stated, had never been purchased of the State, it being school lands, to wit, the southeast fourth of the southeast fourth section sixteen, township twenty one north, of range ten east,
142 containing forty acres; that M. M. Rayburn bought and paid for and got the deed in his own name, and none of that was any part of proceeds of the bonds sold to H. H. Bedford, and that he, M. M. Rayburn, is the sole owner of the premises mentioned in plaintiff's amended bill.

Cross-examined by W. G. Phelan, att'y for pl'ffs:

I know D. B. Miller was present and, I think, Starrs was, at the time Kitchen asked me to go home with him and he would give me the bonds; this was at Bloomfield, Missouri. I bought the land of Solomon G. Kitchen and had a title-bond for a deed with payment in full. There were two witnesses to the bond. I do not recollect their names. This took place at Kitchen's house.

I paid Kitchen in confederate money for the eleven hundred acres of the St. Luke land. I got the bond from Kitchen for the undivided half of twenty-two hundred acres of the St. Luke land for confederate money, for which I paid him ten thousand dollars in confederate money. I never had any other title to the St. Luke land I have been speaking of except the bond stated.

The instrument of writing I gave Solomon G. Kitchen for Mrs. Martha A. Kitchen was a receipt for the one hundred and nineteen Cairo & Fulton Railroad bonds. I have seen said receipt twice since I signed it; the first time I saw the receipt after I signed it was in January, 1867; it was presented to me by Robert Carter. I had it in my hands and read it; the second time was in Bloomfield, Mo., in the fall
143 of 1868, after this suit was brought by Kitchen. I sold the bonds spoken of to H. H. Bedford. I said he paid me in money. I mean by money as follows: By a draft on E. & R. Weber for six thousand six hundred and twenty-five dollars, the balance in money. The draft was drawn in favor of H. H. Bedford, and by H. H. Bedford endorsed in blank to me. I let John Muse & John Timberman have the draft.

The consideration of the draft from E. & R. Weber to H. H. Bedford and indorsed in blank to me by H. H. Bedford, and by me sold to Muse & Timberman, was obtained for the Cairo & Fulton Railroad bonds which I got from S. G. Kitchen, out of the proceeds of said draft, and from the money paid me by H. H. Bedford I bought the land upon which I now live and paid for the same.

The first time it was purchased *it*. The proposition of which I speak was in Solomon G. Kitchen's own handwriting; was his handwriting, and I am satisfied it was.

I know that R. P. Owen was the purchaser of the land. I was present at the sale and heard the sheriff knock it off to him. I think, as far as I recollect, Mr. Owen sold the land to Moore M. Rayburn, for the sum of seventeen hundred dollars, being the amount bid by him for said lands at sheriff's sale. I handed two hundred dollars of that money to R. P. Owen for M. M. Rayburn, and I never saw M. M. Rayburn make any further payments to R. P. Owen, but Owen made
144 a deed to M. M. Rayburn. At the time I am speaking of, M. M. Rayburn was a married man, and had been married about two years. M. M. Rayburn, at the time he was married, *he* was about twenty two or three years old.

I never made any advance to M. M. Rayburn at the time of the payment to R. P. Owen. Since 1863 I never made M. M. Rayburn any advance, except two hundred dollars. I paid him 1866 for his own labor. M. M. Rayburn sent me money from the army to buy him a piece of land. I bought the piece of land from D. B. Miller, on West Prairie, commonly known as the Hamilton Prairie. Moore M. Rayburn opened a farm on said land, and raised five bales of cotton and seven hundred bushels of corn. This was in 1867, & afterwards he sold that place for eleven hundred dollars in money. M. M. Rayburn sold a house and lot in the town of Clarkton, in Dunklin County, State of Missouri, to one O. F. Summers. I do not know how he came in possession of said house. All I know about how M. M. Rayburn got the money to pay R. P. Owen was, he sold O. F. Summers the five bales of cotton and a house and lot in Clarkton. The house & lot sold by Moore M. Rayburn to O. F. Summers was not a part of the land purchased by Rayburn of John Timberman.

W. C. RAYBURN.

Deposition of E. W. Hill.

Deposition of E. W. Hill, taken before M. S. Crabtree, esq., a justice of the peace in and for the county of Stoddard and State of Missouri, at Bloomfield, on the twenty-eighth day of October, 1869.

E. W. HILL, of lawful age, being produced, sworn, and ex-
145 amined, deposeth and saith:

I am acquainted with the parties to this suit. I was acquainted with the parties 1866.

About August, 1866, I he'rd Mr. W. C. Rayburn say that he had some of the bonds of the Cairo & Fulton Railroad Company, and that he was trying to enter land with them, and he made enquiry of me if I knew how these bonds could be converted into lands, and I stated to him *to him* that I did not; that I had bonds of my own that I was trying to dispose of in the same way. Mr. Rayburn asked me what the bonds were worth. I told him that they were not worth much. I had offered my bonds for sale and could not get five cents on the dollar for them. Outside of the arrang'ment effected by H. H. Bedford, said bonds could not have been sold for anything.

In August, 1866, in Arkansas, I heard Mr. Solomon G. Kitchen say he would take five cents on the dollar for what bonds he had, and gave H. H. Bedford a statement in writing to that effect. I know that there were no lands belonging to the Cairo & Fulton Company subject to entry by these bonds, except at such prices as the trustees of said company might place upon them at the time specified, and at no time between the 1st January, 1866, and December, 1866, could said lands have been procured at any price, because there was no board of trustees in existence during that period.

I heard Mr. Kitchen say that he was indebted to Mr. W. C. Ray-
146 burn, and that he had placed these bonds in the hands of Rayburn, in order *that* to secure the payment of said sum. I do not recollect the amount of the indebtedness.

Cross-examined by W. G. Phelan, att'y for plaintiff:

These bonds depreciated in 1861. They remained that way until H. H. Bedford and Rudolph Weber got up an arrangement to sell some bonds, which took place in the fall and winter of 1866. The reason that I know that H. H. Bedford and Rudolph Weber raised the price of bonds by their arrang'ment was that I then, about that time, sold some bonds myself.

E. W. HILL.

Deposition of Henry Miller.

Deposition of Henry Miller, taken before M. S. Crabtree, esq., a justice of the peace in and for the county of Stoddard and State of Missouri, at Bloomfield, on the twenty-eighth day of October, 1869.

HENRY MILLER, of lawful age, being produced, sworn, and examined on the part of the defendants, deposeth & saith:

I am acquainted with parties to this suit. Sometime in October, 1866, William C. Rayburn placed in my hands seventy or seventy-five, more or , bonds of the Cairo & Fulton Railroad Company. He instructed me to ascertain whether lands could be obtained for them, or whether they could be sold for money; if so, what sum. I offered these bonds D. F. Teiderman and Weber and others, and was unable to

find any purchaser. Teiderman requested me to hold on and he would see about it. He never gave me any answer after that time. I was unable to obtain lands or money for the bonds, and returned
147 them to Mr. Rayburn, and told him that if he could get anything for them to sell them, as I did not regard them as of any value. I would not have paid more than one dollar p'r bond for them at that time. At that time the lands around St. Luke, I considered to be worth ten dollars per acre; at this time they are worth more.

HENRY MILLER.

Deposition of H. H. Bedford.

Deposition of Henry H. Beford, taken before M. S. Crabtree, esq., a justice of the peace in and for the county of Stoddard and State of Missouri, at Bloomfield, on the twenty-eight day of October, 1869.

HENRY H. BEDFORD, of lawful age, being produced, sworn, and examined upon the part of the defendants, deposeth and saith:

I am acquainted with the parties to this suit, Solomon G. Kitchen & Martha A. Kitchen & William C. Rayburn & the other defendants.

In the spring of the year 1866 I was acting as an attorney for the Union Bank of the State of Missouri, and had obtained judgment in favor of said bank against D. B. Miller & Solomon G. Kitchen for a large sum of money, & Kitchen & Miller had, th'ough R. P. Owen & myself, got their creditors to agree to take lands, at a certain price, in satisfaction of their indebtedness, and in making this adjustment the lands around St. Luke fell to the Union Bank; and at said time, from Kitchen & Miller I learned that the undivided half of twenty-two acres of said lands had been sold by said Kitchen to W. C. Rayburn, and that before a complete title to said land would be conveyed to the bank,
148 *that* he, Kitchen, would have to make some arrangements with W. C. Rayburn for his interest therein, being the undivided half of twenty-two hundred acres of land, then valued at ten dollars per acre. I had been acting as the attorney of the Cairo & Fulton Railroad Company, of Missouri, from the fall of 1865 until the spring of 1868.

I know from an acquaintance with the condition of the affairs of the said Cairo & Fulton Railroad Company, of Mo., there was no means of obtaining a title to any of their lands from the 1st of January, 1866, until the 1st of April, 1867. I, as the agent and attorney of said company, undertook to get up all the bonds & choses in action belonging to said company, in order to pay off the debts that parties had against said company, and for the object went to Arkansas, in company with D. B. Miller & E. W. Hill, to get three hundred bonds which Miller had stated that he had placed in the hands of Kitchen to be taken care of. Kitchen stated *stated* to me that he had the bonds which Miller had left with him, & that he would deliver them to me if I would pay him his debt against the Cairo & Fulton R. R. Company, which he stated was eight thousand four hundred & twenty-three dollars. I then asked him how many of the bonds he would accept of as full payment of his debt, & he stated that he would not give over fifty dollars per bond in his debt against the company, and after an unsuccessful effort to make some arrangement with Kitchen to get the bonds, he finally exe-
149 cuted to me a receipt for one hundred & sixty-eight of said bonds, stating therein that, upon the paym't *of* to him of said sum he

would deliver them up to the company, if paid with' thirty days, & I then & there stated to him that the company had no money or any means of raising any money, and that it would be impossible for me or the company to make arrangements for the money & get it to him in the time therein limited. He then stated that his only object in limiting the time to thirty days was that he did not want to give time for the other bondholders to organize the board of trustees & select all the good lands before he had an op'rtunity to get his pay, and that if the mon'ys were paid him at any time before the bo'rd of trustees were organized, that he would give up the bonds. Said rec'pt is herewith presented, marked (A.) This conversation took place & the receipt was given in Green County, Arkansas, August 23rd, 1866. I think it was in the month of October, 1866, W. C. Rayburn placed six of the bonds of the Cairo & F. Railroad Company in my hands, with instructions to obtain lands for the same if I could. He at the same time furnished me with the numbers of the lands which he wished me to get for him, with the further instructions to see what could be done with the bonds if I could not get the lands for them.

I had made several unsuccessful efforts to get the bo'rd of trustees organized, and up to that time had been unable to get titles to any lands, or to get any offers for the bonds, and I so informed W. C.
150 Rayburn on the return of the bonds. When I returned the bonds to W. C. Rayburn, he asked me if I would buy them at any price, and I then informed him that I was not willing to pay anything for them then, but that I thought that the time would come when the bonds would be worth something.

I have been connected with the Cairo & Fulton Railroad Company since its re-organization, after the war, and by virtue of my connections know that the bo'rd of trustees wer' not organized until about the 23 day of May, 1867; and further know that titles to lands could not be obtained after the war until that time; and further know that the lands of the Cairo & Fulton Railroad Company, of Missouri, w*as* never subject to entry by the bondholders, and w*as* only to be purchased of the trustees at such price and upon such terms as they saw fit to impose. These facts I stated to W. C. Rayburn at the time I returned to him the bonds which he had let me have. I have heard Solomon G. Kitchen say that he had made William C. Rayburn secure for his interest in the St. Luke lands, by placing in his hands bonds of the Cairo & Fulton Railroad Company sufficient to secure him amply against any loss that he might sustain by surrendering up his interest in said lands.

H. H. BEDFORD.

Which Exhibit A, referred to in the foregoing deposition, is in words and figures following, to wit:

Receipt from Kitchen.

Received of H. H. Bedford, one huudred and sixty-eight land bonds of the Cairo & Fulton Railroad Company, of Missouri, in full
151 payment of the sum of eight thousand four hundred and twenty-three dollars, which the said company was owing me on settlement for cash advanced, services rendered, and work & labor done; and I agree that the said company may redeem the same by paying the above sum of money within thirty days.

Given under my hand this 23d day of August, A. D. 1866.

S. G. KITCHEN.

[2-cent rev. stamp cancelled.]

Deed from sheriff of Dunklin County, Mo., to Reuben P. Owens.

Sheriff of Dunklin County to R. P. Owens.—Deed.

To all whom these presents shall come, I, Elon G. Rathburn, sheriff of the county of Dunklin, State of Missouri, send greeting:

Whereas, on the 18th day of October, in the year of our Lord one thousand eight hundred and sixty-five, judgment was rendered in the circuit court of Stoddard County, Mo., in favor of Horace Whittemore, Robert B. Whittemore, John F. Carter, and Samuel Brown, for the sum of nine hundred and sixty-six $\frac{5}{100}$ dollars, against John M. Muse and John Timberman.

And also on said 18th day of October, 1865, a judgment was rendered in said circuit court of Stoddard County, in favor of Horace Whittemore, Robert B. Whittemore, & John F. Carter against John M. Muse & John Timberman, for the sum of two hundred and ninety-nine $\frac{3}{100}$ dollars upon which judgment executions issued from the clerk's office of said court in favor of the said Horace Whittemore, Robert B. Whittemore, John F. Carter and Samuel Brown, and also in favor of Horace Whittemore,
152 Robert B. Whittemore & John F. Carter, against the said John M. Muse and John Timberman; each of said executions dated the 25th day of September, A. D. 1866, directed to the sheriff of the county of Dunklin, and was to me, the said sheriff, delivered, copies whereof are hereto annexed and made part of this deed. By virtue of which said executions, I, the said sheriff, did, on the 5th day of January, A. D. 1867, levy upon and seize all the right, title, interest, claim, estate, and property of the said John M. Muse and John Timberman, of, in, and to the following-described real estate lying and being in said county of Dunklin, to wit: North half of the northwest quarter of the northwest quarter of section twenty-two, (22;) also, the north half of the west half, and the north half of the southeast quarter of the southwest quarter of section fifteen; also, north half of the east half of northeast quarter of section twenty-one, (21;) also, south half of the southeast quarter, and the south half of the southwest quarter of section fifteen, (15,) and the northeast quarter of the southwest quarter of section fifteen, (15,) all in township No. twenty-one (21) north, of range ten (10) east; also, the northeast quarter of the southwest quarter and the north half of the west half of the northeast quarter of section thirty-four, (34,) in township twenty-three (23) north, of range ten (10) east; also, the southeast quarter of section fourteen, in township No. twenty (20) north, of range nine (9) east.

And having previously to the day of sale hereinafter mentioned
153 given at least twenty days' notice of the time and place of sale, and of the real estate to be sold, and where situated, as the law directs, by advertisement or hand-bills signed by myself, and put up in different parts of said county of Dunklin, by virtue of which said executions and advertisement, I did, on the 4th day of September, in the year of our Lord eighteen hundred and sixty-seven, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of that day, agreeable to said advertisement, at the front door of the court-house, in the town of Kennett, during the September term of the circuit court of Dunklin County, for the year eighteen hundred and sixty-seven, expose to sale at public auction, for ready money, all the right, title, claim, interest, estate, and property of the said John M. Muse and John Timberman, or either of them, of, in, and to the above-described real estate, together with all rights, privileges, and appurtenances thereto belonging,

and Reuben P. Owen being the highest and last bidder for said real estate, at the price and sum of fifteen hundred and sixty-five dollars, the same was stricken off and sold to the said Reuben P. Owen for that sum.

Now, therefore, know ye, that, in consideration of the premises, and of the said sum of fifteen hundred & sixty-five dollars to me in hand paid by the said Reuben P. Owen, the receipt whereof I do hereby acknowledge, and by virtue of the authority in me vested by law, I, Elon G. Rathburn, sheriff as aforesaid, do hereby assign, transfer, and convey to him,
154 the said Reuben P. Owen, all the right, title, interest, claim, estate, and property of them the said John M. Muse and John Timberman, or either of them, of, in, and to the above mentioned and described property, that I might sell, as sheriff as aforesaid, by virtue of the aforesaid executions and advertisement, to have and to hold the same, to him, the said Reuben P. Owen, and to his heirs and assigns forever, with all rights, privileges, and appurtenances thereunto belonging.

In witness whereof, I, Elon G. Rathburn, sheriff of the county of Dunklin, have hereunto set my hand and seal, this sixth day of March, in the year of our Lord one thousand eight hundred and sixty-eight.

ELON G. RATHBUN, *Sheriff.* [SEAL.]

[4 50-cent rve. stamps, cancelled.]

In the Dunklin County circuit court, March term, 1868.—March sixth, 1868.

Be it remembered that, on this day came into court Elon G. Rathburn, sheriff of the county of Dunklin, and acknowledged the execution of the foregoing deed by him as sheriff, as aforesaid, in favor of Reuben P. Owens, for all the right, title, interest claim, estate, and property of John M. Muse and John Timberman, of, in, and to the property therein described, as being conveyed by said deed, which acknowledgment is entered on the records of said court of said date.

In testimony whereof, I hereto set my hand and affix the seal of said court, at office in the city of Kennett, the day and year last aforesaid.

155 L. T. BRAGG, *Clerk.*

STATE OF MISSOURI, *County of Dunklin, ss:*

RECORDER'S OFFICE.

This is to certify, that the instrument of writing to which this is attached was filed in my office for record, and recorded on the 15th day of April, 1868, in book "A," new series, pages 521, 2, and 3.

Witness my hand and official seal the day and date aforesaid.

[SEAL.] L. T. BRAGG, *Recorder.*

By GEO. G. POLLARD, *Deputy Recorder.*

Deed from Reuben P. Owen and Mary H. Owen, his wife, to Moore M. Rayburn.

Owen, R. P. & wife to M. M. Rayburn.—Deed.

This deed, made and entered into this fourteenth day of May, A. D. eighteen hundred and sixty-eight, by and between Reuben P. Owen and Mary H. Owen, his wife, of Stoddard County, State of Missouri, parties of the first part, and Moore M. Rayburn, of Dunklin County, State aforesaid, party of the second , witnesseth: That the said party of the

first part, for and in consideration of fifteen hundred and sixty-five dollars to them paid by the said party of the second part, the receipt of which is hereby acknowledged, do, by these presents, remise, release, and forever quit-claim unto the said party of the second part, all their right, title, and interest, in and to the following-described real estate, lying and being in said county of Dunklin, and State of Missouri,
156 to wit: The north half of the northwest quarter of the northwest quarter of section twenty-two, (22;) also, the north half of the west half and the north half of the southeast ¼ of the southwest quarter of section fifteen, (15;) also, the north half of the east half of the northeast quarter of section twenty-one, (21;) also, the south half of the southeast quarter and the south half of the southwest quarter of section fifteen, (15,) and the northeast quarter of the southwest quarter of section fifteen, all in township No. twenty-one (21) north, of range No. ten east; also, the northeast quarter of the southwest quarter and the north half of the west half of the northeast quarter of section thirty-four, (34,) in township twenty-three (23) north, of range ten east, and the southeast quarter of section fourteen, (14,) in township twenty (20) north, of range nine (9) east.

To have and to hold the same, together with all the rights, immunities, privileges, and appurtenances to the same belonging, unto the said party of the second part, and to his heirs and assigns forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

REUBEN P. OWEN. [SEAL.]
MARY H. OWEN. [SEAL.]

[4 50-cent rev. stamps, cancelled.]

STATE OF MISSOURI, *County of Stoddard, ss:*

Be it remembered that, on this sixteenth day of May, A. D.
157 eighteen hundred and sixty eight, before me, the undersigned clerk of the circuit court in & for the county and State aforesaid, came Reuben P. Owen, and Mary H. Owen, his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and they acknowledged the same to be their act and deed for the purposes therein mentioned.

And she, the said Mary H. Owen, wife as aforesaid, having been by me first made acquainted with the contents of said instrument of writing, on an examination seperate and apart from her husband, acknowledged that she executed the same freely and without compulsion or undue influence of her said husband, and relinquished her dower in the real estate therein conveyed.

In witness whereof I have hereunto set my hand and official seal the day and year last above written.

[SEAL.] R. M. FRAKER, *Clk.*

STATE OF MISSOURI, *County of Dunklin, ss:*

I, the undersigned, recorder in and for said county and State, do hereby certify that the foregoing deed was, on this 21st day of November, 1868, filed for record in my office, and is truly recorded in book A, No. , pages 593 & 594.

Given under my hand and official seal the date and year last aforesaid.

[SEAL.] LEONARD T. BRAGG, *Recorder.*
158 By W'M G. BRAGG, *Deputy.*

Deed from State of Mo. to M. M. Raybourn.

The State of Missouri to all to whom these presents shall come, greeting:

Know ye that there has been deposited in the office of register of lands of said State an abstract of the sale of township school lands, in the county of Dunklin, whereby it appears that, in pursuance of the several acts of the general assembly of said State, providing for the sale of the township school lands, John Hogue became the purchaser of the southeast quarter of the southeast quarter of section sixteen in township twenty-one of range ten east, containing forty acres, at the price of one dollar and twenty-five cents per acre, (being land granted by the United States to the State of Missouri for the inhabitants of said township for the use of schools,) for the sum of fifty dollars and cents, which sum, it further appears, has been fully paid by Moore M. Rayburn, assignee of John Hogue.

Now, in consideration of the premises, and in conformity with the provision of the hereinbefore-recited acts, the State of Missouri hath given and granted, and by these presents doth give and grant, unto the said Moore M. Rayburn, and to his heirs, the land above described, to have and to hold the said tract, with the appurtenances, unto the said Moore M. Rayburn, and to his heirs and assigns forever.

In testimony whereof I, Joseph W. McClurg, governor of the State of Missouri, have caused these letters to be made patent, and the seal of the State to be hereunto affixed by the secretary of state.

159 Given under my hand at the city of Jefferson, this thirteenth [SEAL.] day of February, in the year of our Lord one thousand eight hundred and sixty-nine.

By the governor:

J. W. McCLURG.
FRANCIS RODMAN,
Secretary of State.

160

161 And on the 21st day of September, A. D. 1871, there was filed in the clerk's office of said circuit court an agreement by counsel, which agreement is in the words and figures following, to wit:

Agreement.

UNITED STATES OF AMERICA,
Districts of Missouri, ss:

In the circuit court of the United States for the districts of Missouri.

SOLOMON G. KITCHEN
vs.
WILLIAM C. RAYBURN ET AL. } In equity.

It is hereby stipulated and agreed by the parties to the above-entitled cause, that the schedule of lands embraced in and forming a part of the deed of trust of the Cairo & Fulton Railroad Company of Missouri, to John Moore, John Wilson, & Albert G. Waterman, (Exhibit "B" of deposition of Solomon G. Kitchen,) may be omitted from the transcript of the record & proceedings in said cause. And it is further agreed that the certificates of the several clerks of the counties in which said

lands are situate, that the said deed is recorded in said counties, may, in like manner, be omitted from said transcript.

THOMAS T. GANTT,
For W'm C. Rayburn et al., Defendants.
SAMUEL N. HOLLIDAY,
Att'y for the Complainant.

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163 UNITED STATES OF AMERICA,
Circuit Court for the Districts of Missouri, ss:

I, Austin Drake, clerk of the circuit court of the United States in and for the districts of Missouri, do hereby certify the writing hereto annexed to be a true transcript of the records and proceedings in case of Soloman G. Kitchen against William C. Rayburn, et al., as fully as the same remains on file and of record in said case, in my office.

In witness whereof I hereunto subscribe my name, and affix the seal of said court, at office in the city of St. Louis, in said districts, this 27th day of September, in the year of our Lord eighteen hundred and seventy-one.

[SEAL.]

AUSTIN DRAKE,
Clerk of said Court.

(Indorsed:) United States circuit court, districts of Missouri. Solomon G. Kitchen against William C. Rayburn et al. Duly certified copy of the record & proceedings in the above-entitled cause.

(Indorsement on cover:) No. 333. Solomon G. Kitchen, appellant, vs. William C. Rayburn et al. Missouri C. C. U. S. Filed 19th January, 1872.

In the Supreme Court of the United States.

OCTOBER TERM, 1873.

SOLOMON G. KITCHEN, *Appellant*,
vs.
WILLIAM C. RAYRURN *et al.* } No. 126.

BRIEF FOR APPELLANT.

This is an appeal from the circuit court of the United States for the District of Missouri.

The bill was filed by S. G. Kitchen, 21st August, 1868, against the defendants, to compel a conveyance to him of a certain tract of land, which the complainant alleged had been purchased by W. C. Rayburn, with the proceeds of certain railroad bonds, placed in his hands by the complainant to be used in the purchase of railroad land, but which the said Rayburn had, without authority, sold for money, and with that money purchased the land in question. (Record, p. 1.) The defendants answered. (Record, p. 6.) Afterwards the complainant filed an amended bill, in which his wife joined as party complainant (record, p. 10), and the complainants filed an answer to the amended bill. (Record, p. 17.) Replication was filed (record, p. 23), and cause heard on pleadings and proofs (record, p. 24), and the bill was dismissed. The complainants appealed. (Record, pp. 24, 25.)

The bill states that the complainant, Solomon G. Kitchen, on the 16th of March, A. D. 1866, placed in the hands of William C. Rayburn 119 bonds of $1,000 each of the Cairo and Fulton Railroad, with coupons attached, upon the trusts expressed in a receipt then and there given by the said Rayburn to the following effect, viz: He acknowledged to have received from the complainant, Martha A. Kitchen, $119,000 of bonds of the Cairo & Fulton Railroad, with $54,405 of coupons, which he promised to expend in the purchase of lands from the trustees of the Cairo and Fulton Railroad Company, at or near the average price of $5 per acre, taking the deeds in his own name, and to sell the lands as she should direct, and to pay over to her seven-eighths of the net proceeds, after deducting traveling expenses and stamps.

The bill further alleges that Rayburn, about the 20th of December, 1866, in violation of his trust, sold the bonds for $10,000, in money, and on the 11th of March, 1867, with $5,000, part of the money so obtained, purchased two tracts of land, one containing 271¾ acres, and the other (12x16) 192 perches of land, and took the deed in the name of his son, Jacob V. Rayburn, who has died, leaving brothers and sisters, his heirs at-law, who also are made parties defendant.

That the land was purchased from one Timberman, who was surety of one Muse, and a judgment having been recovered against Timberman and Muse some time before the purchase by Rayburn, the land was sold under execution in September, 1867, and bought by one R. P. Owen, who afterwards conveyed it to Moore M. Rayburn, a brother of Jacob V. Rayburn, deceased, for a consideration expressed in the deed to be $1,565, but that, in fact, the consideration never was paid, but the debt was paid by Muse, the principal debtor, and was, in fact, a redemption

of the property, and that the conveyance from Owen to Moore M. Rayburn was procured fraudulently to place the property beyond the reach of the complainants.

The answer denies that any bonds were placed in W. C. Rayburn's hands on the trusts alleged, and avers the truth to be that, "the said Solemon G. Kitchen was justly indebted to the said W. C. Rayburn in the full sum of $11,000, for the payment of which the said William C. Rayburn held certain securities which the said Solomon G. Kitchen was desirous of withdrawing," and the said Kitchen produced to the said W. C. Rayburn 124 bonds of one thousand dollars each, with coupons, of the Cairo and Fulton Railroad Company, and represented that they were receivable at par for lands along the track of the railroad, and that the holder of such bonds could enter and pay for lands with such bonds at a minimum price of $5 per acre, and that for five of the bonds and accrued interest the said Rayburn could become owner of lands worth $11,000, and he requested Rayburn to convert the other $119,000 of the bonds and the coupons attached into such lands, taking the deed in his own name, and then to sell the lands and pay over seven-eighths of the net proceeds; that the said Rayburn, believing the representations so made, surrendered the securities for the $11,000, and executed a memorandum promising to invest the other $119,000 as requested, *but that it was agreed at the time that the claim of Rayburn against Kitchen should first be paid out of the* $124,000 *of bonds and the proceeds thereof, and if the five bonds included in the* 124 *should not be sufficient to pay the debt, then the* 119 *bonds should be dedicated in the first place to the payment thereof.* And that upon the faith of the representations so made by Kitchen, "*and upon the agreement made between said Rayburn and the said Kitchen as aforesaid, after the signing and delivery of the said memorandum as to the appropriation of the proceeds of the* 119 *bonds, in the first place to the satisfaction of whatever portion of the*

said debt of $11,000 *from the said Kitchen to the said Rayburn, owing as aforesaid, might remain unpaid and unsatisfied after the application thereto of the proceeds of the sale or investment of the said five bonds not included in said memorandum, the said William C. Rayburn received the* 124 *bonds of the said C. & F. R. R. Co., and agreed to convert them into land as suggested by the said S. G. Kitchen, and as was declared by him to be practicable,* or otherwise dispose of the same, *and out of the proceeds thereof, to satisfy in the first place, the aforesaid debt of the said Solomon G. Kitchen to the said William C. Rayburn owing, and to hold the residue of said proceeds to the use of Martha, wife of the said Solomon G. Kitchen, as to seven-eighths thereof, reserving to himself the one-eighth thereof."*

That the representations of Kitchen as to the convertibility of the bonds were false and Kitchen knew it; that the bonds had no market value whatever and were unsaleable; that the railroad company had no title to the lands; and that Rayburn having an offer of $10,000 for the 124 bonds, and knowing that Kitchen had estimated them at less, he, Rayburn, sold the bonds, and applied the proceeds to the satisfaction, in part, of Kitchen's debt to him.

He admits he sought to purchase for his son Jacob with a part of the same money the tract of land in question, and made payment therefor, but says it was in good faith as an advancement to his son, and he says the title failed by reason of the sheriff's sale, and that after the sale and purchase by him, "*the said Moore M. Rayburn paid to said Owen, out of his own means and money the price mentioned in the said deed from the said Owen to the said Moore M. Rayburn,* who holds the land as his own." This answer is also sworn to by Moore M. Rayburn. (Record, pages 17, 22.)

[It may be here noted that Kitchen sued Bedford, who bought the bonds from Rayburn, in trover for their value; the case was tried by the court, and judgment being given

against him, it was brought by writ of error to this court. Two points were made by the defendants that Kitchen alone could not maintain the action, and that by the true construction of the memorandum of trust, Rayburn had the right to sell. This court overruled the objections and reversed the judgment. (13 Wall., 413.]

The Evidence.

The evidence, with the single exception of W. C. Rayburn's own deposition, is all to the same effect, and even his deposition does not support his answer.

1. The receipt of Rayburn for the bonds is produced and proved, (record, page 38,) and is precisely to the effect stated in the bill. He acknowledges receipt of the bonds and coupons and undertakes to use them in purchasing land of the railroad company, &c. Not a word is said about any sale of the bonds or any debt due him, or any other application of the bonds that the one specified.

2. His answer admits that he sold them for money.

3. A letter from him to Kitchen is produced, dated February 8, 1867, as follows:

"DEAR SIR: I received your note a few days ago, and should have wrote to you before but was on my way to Cape Girardeau. Colonel, *I may have done wrong*, but if I have, I thought it was the best [that] could be done, and I hope you will be satisfied. I have sold the bonds; D. B. Miller advised me to sell. He sold and everybody else that had bonds I think. The whole number of bonds that went from Bloomfield was something over $800,000. I agreed to take whatever they got, and I got only $10,000, or am to get by the first of April next. *I ought to have went to see you before I sold, but hope you will be satisfied. I will write again soon.* Let me hear from you.

"W. C. RAYBURN." (Record, p. 47.)

4. R. P. OWEN testifies that he was the attorney of the creditors under whose execution the land was sold. That he bought it in, and paid no money except costs of suit and levy, "*as I bid off the land for my clients if they chose to take it;*" that before the sale he had told W. C. Rayburn that the executions had been levied on the land, and Rayburn went with him to see Muse, but Muse could not then make any arrangements to settle; that he told William C. Rayburn and John Muse that if they would pay him the amount of debt, interest and costs of the two executions he would make a quit claim deed back to the lands, and would wait till the 1st of January, and that W. C. Rayburn said if Muse did not pay the money his son Moore M. Rayburn had some money coming to him, and that he could use that in the payment of the claim. The witness proceeds to say, that about the 11th of December Muse came to pay the claim, but as he offered checks or drafts witness referred him to his clients, giving him a letter to them. His clients wrote him that Muse had settled the claim by drafts, and afterwards wrote that the drafts had been paid. "After I was informed that the drafts had been paid, I made a deed of all the land which had been sold under the execution to Moore M. Rayburn at the request of William C. Rayburn, John Timberman and John Muse." The deed was delivered to William C. Rayburn. Witness knew Moore M. Rayburn but never spoke to him about the land. (Record, page 54.)

Assignment of Error.

1. The court erred in dismissing the bill. The bill makes a proper case for the relief prayed, and the evidence sustains it, while the defendant's evidence entirely fails to support his answer.

2. The court erred in admitting Rayburn to set up a verbal agreement made at the same time with the sealed

memorandum of trust, and inconsistent with and contradictory of it.

Now, as to the defence, the evidence shows this:

Kitchen and Miller owned about 2200 acres of land called the St. Lake land. In 1864 Rayburn bought Kitchen's undivided half interest in said land for $10,000 in Confederate money and paid nearly the whole, say $9,400 and upwards; no deed of conveyance was made, but a bond was given. After the war, there being heavy judgments against Kitchen and Miller, they desired to use this land in payment, their creditors agreeing to take it at about $4 per acre. Then, in order to get the disposal of the land, Kitchen desired to annul his contract with Rayburn, and for this purpose gave him the five bonds of the C. and F. Railroad Company. The depositions of both parties agree thus far. The difference between them is that Kitchen says the five bonds were in full satisfaction for the surrender of the bond of conveyance, while Rayburn says the five bonds or the proceeds were to be credited on account, and the 119 bonds were to be liable if the five bonds were insufficient.

Kitchen's story agrees with the contemporaneous writings and is consistent with itself. Rayburn's is inconsistent with his written contract, and in itself improbable.

1. According to Rayburn's own showing, Kitchen owed him no debt of $11,000. His story is that he had bought Kitchen's half of the St. Lake tract for $10,000, Confederate money, and gave it back for the five bonds, on the assurance that those bonds would be received in payment for land worth $11,000 (answer, *Record, p.* 18, *fol.* 41); but he perfectly well knew that the bonds would be received only at their face value and interest for such lands as he should select. The eight years' interest at seven per cent. was about fifty-six per cent., making, with the bonds, $7,800; so that Kitchen must have become indebted to him in the sum of $11,000 by telling him that with $7,800 bonds he could buy land worth $11,000, if he would select

it prudently. But an obligation incurred by this false representation would not answer the description of the answer, that when this negotiation began Kitchen was indebted to him "in the full sum of $11,000, for the payment of which the said W. C. Rayburn held certain securities, which the said S. G. Kitchen was desirous of withdrawing." How can this be true, when the single fact was that Rayburn had bought and paid for half the St. Lake land for $10,000, Confederate States money, and that Kitchen was merely bound to make a deed?

And it further appears, by Rayburn's own testimony, record, p. 61, folio 139, that he did not surrender the bond of conveyance until after he had executed the declaration of trust and received the bonds, and ascertained the difficulty in disposing of them. Then, and upon Kitchen's encouraging him to believe that the company would be organised and the lands made subject to entry he surrendered the bond of conveyance for the St. Luke land. The proof is that the bonds could not be converted into land *prior to May* 23, 1867, when the bond of trustees was organized (record, p. 66, fol. 150); then *it seems* the lands could be bought with bonds, but at prices fixed by the trustees.

2. And then, as Rayburn says, the balance of the $11,000, after crediting the five bonds, was to be paid out of the one hundred and nineteen bonds. How was the balance to be ascertained? What credit was to be given for the five bonds? Rayburn says he took them, fully believing he could buy with them land worth $11,000 (answer, Record 18, folio 61. There was no agreement for anything else to be done with them. He does not pretend that any arrangement was made or spoken of between him and Kitchen specifically about any sale.

Rayburn's doubt was whether the bonds would be sufficient to enter the required quantity of land. "I told S. G. K. * * * that I did not know whether the five

bonds he had laid out for me would enter me the 1,100 acres of land and pay all expenses or not. Kitchen told me they would; and if they did not, he said, pay yourself out of the bonds he was going to give me, and take my receipt therefor." (Record, p. 61.) Does this, if true, mean sell the bonds and take the money, or does it mean take sufficient bonds to enter 1,100 acres?

2. In his letter to Kitchen confessing the sale of the bonds, not a word is said about any debt due to him or any claim of his upon the whole proceeds. The letter admits unreservedly that he had done wrong, and his hope that Kitchen would be satisfied with the sale, confirms the view that Rayburn was a mere trustee, who, being entrusted with the bonds for a certain purpose, had disposed of them otherwise, but still, as he insisted, advantageously for his *cestui que* trust.

3. In 1866 he told Phelan (Record, p. 58,) that he was worth nothing, and could not pay a debt of $300, and this although *it seems* he had then the railroad bonds in his possession.

4. His sworn answer in regard to the purchase of the land from Owen is unsupported by any evidence, and is contradicted in every particular by Owen, who proves that Muse, the real principal, paid the money in pursuance of an agreement with him, and thus redeemed the land of his surety, Timberman, which Timberman had sold to Rayburn with covenant of general warranty. (Record, p. 15.) This ought to dispose of his whole answer, *Falsum in uno, falsum in omnibus.* He and his son Moore having both sworn in their answers that Moore had paid the price to Rayburn "out of his own means and money," and Owen having testified to the contrary, Moore did not think proper to testify on the subject.

5. The idea that W. C. Rayburn, who in that same year, 1866, declared, and no doubt truly, (Record, p. 58,) that he was not worth anything in the world; that he had no

property, and was broken up by the war; would make a present of $5,000 to his unmarried son, Jacob, aged 23, (Record, p. 52,) while his own wife and five other children were living, is incredible. Quite as much so is the idea that he would quietly sit down under the loss of this $5,000, when the property was sold by the sheriff, and see his son, Moore, buy it for $1,575. That W. C. Rayburn held and controlled the land seems abundantly proven. Rec., pp. 47, 48, 49, 50, 51, 52.

6. The counsel, in theexamination of the witnesses, labored to prove that the bonds were only worth five cents on the dollar. This might have been material if the complainant were seeking to charge the defendant with some higher price; but as he is only seeking the admitted proceeds of the bonds, their value is of no consequence. Rayburn realized about eight cents, and the next seller about twenty cents. The complainant only seeks in this suit to recover what the defendant realized.

7. An attempt was made to show that Kitchen took the receipt in the name of his wife to defraud his creditors; at least he was asked if he did not do so. But this he satisfactorily answered, by showing that he had then made arrangements, which were afterwards carried out, to settle every judgment against him of which he had any knowledge. This, however, was pertinent to no issue in the case, and was calculatd only to create prejudice.

8. For the same purpose it is shown that Kitchen gave only five cents on the dollar for the bonds; but he took them for a debt due him, as the defendant's own evidence shows, agreeing to give them back within a limited time at the same price, or at any time before certain measures should be taken which would render them worthless. That is to say, the only value of the bonds was their power to purchase the railroad lands, and the value of any number of the bonds depended on their being used for that purpose before the good lands were taken up. Kitchen was

willing to hold them subject to redemption as long as would be safe on that account. Record, p. 66,

9. There can, we submit, be no question as to the right of the complainants to the relief prayed. Story, speaking of land purchased with trust money, in pursuance of a trust, and the conveyance taken in the trustee's own name, says the property will be held as a resulting trust for those entitled, and proceeds: "In every such case, however, it must be clear that the land has been paid for out of the trust money; and if this appears a trust will be implied, not only where the party may be presumed to act in the execution of the trust, but even where the investment is a violation of the trust; for in every such case when the trust money can be distinctly traced, a Court of Equity will fasten a trust upon the land in favor of the person beneficially entitled to the money." (Story, Eq. Jur., sec. 1210.)

Conclusion.

We submit the decree of the Circuit Court should be reversed, and the case remanded, with directions to decree the relief prayed.

J. M. CARLISLE,
J. D. McPHERSON,
For Appellant.

IN THE

Supreme Court of the United States.

No. 126.—October Term, 1873.

Solomon G. Kitchen, Appellant, *vs.* William C. Rayburn and Others.	Appeal from the U. S. Circuit Court for the Districts of Missouri.

BRIEF FOR APPELLEES.

1. Complainant's own testimony shows (p. 30) that he induced Rayburn to surrender 1100 acres of land at St. Luke, in Stoddard county, by representing to him that he could enter other lands at five dollars an acre in that county, or in the counties of Butler, Dunklin, and Mississippi—a representation which was wholly untrue, and which the complainant knew to be untrue. He had been an officer of the C. & F. R. R. Co. himself, and got possession of these bonds as such officer, and knew that at the time the company had no organization; and it appears by Bedford's deposition (p. 66, folio 150) that even when the company was organized, in 1867, that five dollars in these bonds was not the price fixed for these lands; that, indeed, the land could only "be purchased of the trustees at such price as they thought fit to impose." And this is also shown by the trust deed (p. 41), which only provides that the lands shall not be sold for less than five dollars per acre.—(See also depositions of Starr, p. 59; Hill, p. 64; Miller, p. 65.) Note the false

swearing of the complainant as to this transaction. (Folio 65.) According to this it was Rayburn who sought to exchange his St. Luke land for the five bonds, whereas it is shown by all the circumstances that it was of his seeking entirely. His counsel, at page 7 of their brief, say: "After the war, there being heavy judgments against Kitchen and Miller, they desired to use this land (St. Luke's) in payment, their creditors agreeing to take it at four dollars per acre. Then, in order to get the disposal of the land, Kitchen desired to annul his contract with Rayburn, and for this purpose gave him the five bonds of the C. and F. R. R. Co." And the bank would not take the undivided interest in this land held by Kitchen's partner, and, hence, it was necessary to get the one-half held by Rayburn. That one-half had, therefore, a peculiar value. Hence the misrepresentations to which the testimony shows Kitchen resorted to to obtain it. Thus, Starr says (folio 132) he said "he would give him railroad bonds sufficient to secure him in the sum of $10,000" if he would give up the St. Luke land. Again, (folio 134,) "that it is doubtful whether he could make him a good deed" to that land, "but that he would secure him by giving him railroad bonds, which would enable him to enter more and better land."—(See also depositions of A. C. Carter, folio 125, and R. W. Carter, folio 127.) On his own showing he got from Rayburn what was worth to him and his partner $8,800 for five bonds which he said (folio 74) were not worth $200. There never was a grosser imposition. Nor is it attempted to be defended. When it came to be known to the defendant, the court say, in 13 Wall., looking at the transaction from the law side of the court, that he could not buy the lands on those terms, he ought to have returned the bonds. But Kitchen had then disposed not only of the St. Luke land obtained from Rayburn, but of all his lands, and Rayburn had the best reason for believing he was insolvent, he having asked him to cover up property for him.—

(p.60.) Equity will not relieve a complainant who has himself acted fraudulently in a transaction.—(Cunningham vs. Shields, 4 Hey.; Lucas vs. Mitchell, 3 A. K. Marshall, 244.) Nor enforce a contract shown to be obtained by misrepresentation, (Story, § 59,) or aid a party who has gained an unfair advantage.—(Bein vs. Heath, 6 How., 247.)

2. The appellant seeks to recover from the appellees lands claimed to have been purchased with the proceeds of certain bonds held by said William C. Reyburn in trust for said appellant, which bonds were sold by said Reyburn to H. H. Bedford in violation of the trust. This court, in Kitchen vs. Bedford, 13 Wall., p. 413, held that the sale in question was void; that Bedford got no title to the bonds, and that an action of trover could be maintained against him by Kitchen; and it appears in this record (p. 33, fol. 74) that complainant had sued Bedford for these bonds. It follows that the money received from Bedford belongs to him, not to Kitchen.

3. The Bedford money was invested in land which was conveyed by Timberman to Jacob Rayburn, the son of William. Jacob died, leaving as heirs his father, mother, sisters, and brothers, from whom the original bill seeks to divest this title. The answer disclosed the fact that no title was obtained by the conveyance of Timberman, but was acquired by M. M. Rayburn, one of the sons, by deed from R. P. Owen, no part of the consideration for which was derived from Bedford. The amended bill charges that the deed from Owen was fraudulent, which the answer denies. "It must be clear," says Story, as quoted by opposing counsel, p. 11, "that the land was paid for out of the trust money." This certainly can not be said of the title held by M. M. Rayburn. The counsel says, (p. 9): "He (Wm. C. Rayburn) and his son, Moore, having both sworn in their answers that Moore had paid the price (of the land) out of his own means and money, Owen having testified to the con-

trary, Moore did not think proper to testify on this subject." Hence, he concludes, they are both convicted of falsehood and discredited as to any point. All this stands upon no other foundation than that Owen states that Muse gave the drafts for which the deed was made by Owen, although Muse asked that the land be conveyed to Moore M. Rayburn, and Wm. C. Rayburn states specifically whence Moore got the means with which he paid for the land.—(p. 63, folio 144.) "He sold O. F. Sommers five bales of cotton and a house and lot in Clarkton." See also on this point White's confirmatory testimony, a witness for complainant, p. 49–50. And although both Muse and Sommers, whose drafts were given, were examined (pp. 47, 51) by plaintiffs, neither of them were asked whether that draft was paid for by Moore. No inference prejudicial to Moore can be drawn from his not having been a witness. His answer is evidence, and it is not only uncontradicted, but is fully corroborated by all the circumstances.

M. BLAIR,
F. A. DICK.

December, 1873.

SOLOMON G. KITCHEN

AND

MARTHA, HIS WIFE, Plaintiffs.

vs.

W. C. RAYBURN, et al. Def't.

In Chancery.

IN THE

Supreme Court of the United States

ON APPEAL

from the Circuit Court

of the United States

FOR MISSOURI.

In this case the bill was first filed in the name of Kitchen alone against the defendants. On the filing of the answer he amended his bill by joining his wife with him as co-plaintiff, and otherwise altering his complaint. By this amended bill it was alleged that in 1866, Kitchen was the owner of 119 bonds of the Cairo & Fulton Railroad Company, all dated 23d May, 1857, by each of which said Cairo & Fulton Railroad Company promised to pay to * * * or assigns the sum of $1000.00 on the 1st October, 1882, and also semi-annual interest on the same at the rate of 7 per cent per annum . from 1st October, 1857. That on 16th March 1866 the complainants p'aced these bonds in the hands of Wm. C. Rayburn, who thereupon executed under seal a written instrument of that date, whereby he acknowledged the receipt from Martha A. Kitchen, wife of S. G. Kitchen, of the sum of $119,000.00 in the bonds of the Cairo & Fulton Railroad, and also tbe sum of $50,405.00 of interest coupons, amounting together to $169,405.00, which sum Rayburn promised to expend in the purchase of land from Jno. Moore, Jno. Wilson and Albert G. Waterman, Trustees of the Cairo & Fulton Railroad Com-

pany, at or near the average price of $5.00 per acre, taking the deeds therefor in his own name, and to sell the lands as soon as possible, at such prices as Martha A. Kitchen should direct, and after deducting the expense of stamps and necessary travelling expenses, to pay over to Martha A. Kitchen or her order seven-eighths of all the money arising from the sale of said lands. That the Cairo & Fulton Railroad Company executed its deed, dated May 23th, 1857, to secure the payment of said bonds, conveying to Jno. Wilson, Jno. Moore and Alb. G. Waterman 400,000 acres of land, stipulating, that the owner of any of the bonds might purchase any of the lands at the average price of $5.00 per acre, and pay for them in said bonds, of all of which Rayburn had notice. That Rayburn kept the bonds until December, 1866, when in violation of his contract he converted them to his own use, by selling them to Henry H. Bedford, Randolph Webber and Daniel Miller, and received therefor the sum of $10,000.00. That on 11th March, 1867, he purchased from John Timberman a certain tract of land, paying therefor $5000.00, parcel of the proceeds of the sale of said bonds. That Rayburn was then and is now wholly insolvent, and that he caused the deed for said land to be made to his son Jacob V. Rayburn. This deed was dated 11th March, 1867, and was recorded 21st November, 1868. That Jacob V. Rayburn paid no consideration for said land, but the same was paid by Wm. C. Rayburn. That Jacob V. Rayburn died intestate in June 1867, leaving the defendants his heirs and legal representatives. That they have been in the possession of said land since its purchase, taking the rents and profits. That two executions were issued from the Circuit Court of Stoddard County, in September, 1866, in favor of Horace Whittemore, against John Timberman, and Jno. M. Muse, one for $973.31, the other for $297.33, and delivered to the Sheriff of Dunklin County, and under these on 4th September, 1867, the said land was sold to Reuben P. Owen, the attorney

of the execution creditors, to whom the Sheriff made a deed on 6th March, 1868. That Owen on 14th May, 1868 conveyed said land to Moore M. Rayburn, one of defendants. That Owen and Moore M. Rayburn had full notice of the previous sale by Timberman to J. V. Rayburn. That Moore M. Rayburn paid Owen no consideration for said deed, nor agreed to pay him any. That Moore M. Rayburn knew nothing of the conveyance to him at the time of its date. That after the conveyance from the Sheriff to Owen, and before the making of the deed, by Owen to Moore M. Rayburn. Muse, who was the principal debtor, paid the judgment to Whittemore. That the sale of the bonds by Wm. C. Rayburn to Bedford, Webber, Miller, and the purchase of the said real estate with the proceeds in the name of J. V. Rayburn were a fraud on complainants. That the conveyance from Owen to Moore M. Rayburn was procured by Wm. C. Rayburn in persuance of the same fraudulent purpose, and the prayer of the bill was, that the title of the defendants in said real estate should be passed to plaintiff.

The answer of the defendents denied, that complainants placed in the hands of W. C. Rayburn, or otherwise delivered to him any bonds of the Cairo & Fulton Railroad Company, on the condition, terms and trusts in the amended bill, stated: on the contrary, on the 16th of March, 1866, Solomon G. Kitchen was indebted to Wm. C. Rayburn in the sum of $11,000.00 for the payment of which Rayburn held certain securities which Kitchen desired to withdraw: and thereupon Kitchen produced to Rayburn 124 bonds, each for $1000, and Coupons for seven per cent interest, and represented, that he was the owner thereof. These bonds purported to be the bonds of the Cairo & Fulton Railroad Company, but some of them where not duly executed, and had not received all the authentications necessary to constitute them according to their tenor, such obligations. Kitchen represented to Rayburn, that these bonds with the accumulated interest were re-

ceivable at par for lands, belonging to the Cairo and Fulton Railroad Company, at a minimum price of $5 per acre. That the holder of the bonds could enter land along the track of the railroad at discretion at $5 per acre, and pay for it with the bonds at par. That with five of these bonds, Rayburn could purchase lands worth $11,000, and Kitchen requested Rayburn, to use the remaining 119 bonds in entering in like manner other lands, along said Railroad, and to dispose of them, receiving 1⁄8 of the net proceeds for his trouble, and holding 7⁄8 of them to the use of said Kitchen.— Rayburn trusting to the confident representations made by Kitchen, and being altogether ignorant of the affairs of the Railroad Company, received from Kitchen the 124 bonds, delivered up to Kitchen the securities he held for the debt of $11,000, and executed to Kitchen a memorandum in writing promising to invest the amount of 119 bonds in lands, dispose of them and hold 7⁄8 to the use of Martha, wife of S. G. Kitchen. The provision as to his wife, was inserted at Kitchens suggestion, but it was agreed between Kitchen and Rayburn, before and after the making of this memorandum, that the debt due to Rayburn from Kitchen, should be first of all paid out of the whole 124 bonds, and that, if the 5 bonds, named in the memorandum, should not prove sufficient to pay that debt, then the other bonds, 119 in number, should be appropriated to that object. Upon these terms Rayburn received the bonds, viz. to apply their proceeds first to satisfy the debt from Kitchen to Rayburn, and than to purchase with the residue lands along the line of the railroad, and sell them, receiving 1⁄8 of the net proceeds to his own use, and holding the rest to the use of Martha, wife of S. G. Kitchen. All the said representations and assurances of Kitchen were false, fraudulent and deceptive. The bonds were not convertible into land, as Kitchen had declared, and Kitchen, when making the representations aforesaid, known them to be false. The bonds were not saleable for money on any terms, and had in fact no market value whatever. The Cairo and

Fulton Railroad Company was hopelessly and utterly insolvent and its obligations entirely worthless. It had no title to the lands described by Kitchen.

In November, 1866, Rayburn was offered $10,000.00 for the whole 124 bonds. This sum was more than they were then worth — more than they were worth on 16th March, 1866 — and more than they were worth at any time, between 16th March, 1866, and the commencement of this suit. While he was deliberating on this offer, it came to the knowledge of Rayburn, that Kitchen himself valued the whole of said bonds, at less than $10,000, and thereupon Rayburn in good faith, and for the purpose of re-imbursing himself for the debts, due to him by Kitchen, and in pursuance of the agreement with Kitchen, sold the bonds to H. H. Bedford, about 1st of December, 1866, for $10,000.00. The sale was fairly conducted in all respects. Rayburn applied the money received to the debt owing from Kitchen leaving $1000, and interest still due. At no time, except at that at which the bonds were thus sold, could they been sold so advantageously. The price obtained was the result of circumstances transient in their nature, of which Rayburn opportunely took abvantage, and thus realised this favorable price. It was admitted, that Wm. C. Rayburn sought to purchase a farm for his son, with part of the money thus received; but with no design of thereby defraud plaintiffs, or any one. The purchase was attempted openly and fairly as an advancement for his son. Wm. C. Rayburn was not and is not insolvent, as stated in the amended bill. The title which Wm. C. Rayburn thus attempted to acquire for his son, by purchase from Timberman, was wholly defeated by a sale made of the land by the Sheriff of Dunklin County, Mo., in the month of September, 1867, by virtue of two judgments obtained in favor of Whittemore & Co., of St. Louis, in Stoddard Circuit Court, on 18th October, 1865; executions whereon had

been issued and come to the hands of the Sheriff of Dunklin County on 5th January, 1867, and were levied on the land on that day, and the same was duly sold thereunder to R. P. Owen, at the September Term, 1867, of the Dunklin Circuit Court, and the Sheriff executed a deed therefor, on 6th March 1868, to said Owen for $1565.00. Owen paid to the Sheriff the sum bid by him, and on the 14th May, 1868, Owen sold the land for value to Moore M. Rayburn. No part of the price paid by Moore M. Rayburn to Owen was money arising from the sale of the bonds by Wm. C. Rayburn to Bedford. Moore M. Rayburn holds the land as his sole and several property under the deed from Owen, except SE. of S E. 16, T. 21, R. 10 E.—which he has acquired by patent, dated 13th February, 1869, from the State of Missouri—and all the other defendants admit the title of said Moore M. Rayburn, and disclaim any interest in the land.

Whether, as stated in the amended bill, Owen before purchasing the land at Sheriffs sale, knew that the judgment debtor had after the attaching of the lien thereof, sold his interest in the land, defendants do not know, and consider the question wholly irrelevant. But they say, that Owen by said purchase became clothed with all the title which said Timberman had at the rendition of said judgments, or at any intervening time, before the sale in September, 1867, and that the land now belongs to Moore M. Rayburn by virtue of said purchase from Owen who purchased at Sheriffs sale.

At the hearing the Court dismissed the bill. Complainant appealed. The following evidence was given at the hearing. R. B. Whittemore testified, that in December, 1867, J. M. Muse came to St. Louis and settled the judgment obtained in favor of Whittemore & Co. vs Timberman and Muse, by two drafts at 60 and 90 days, which were paid. These drafts were drawn by O. F. Somers & Co., on J. & S. Albert, of Cape Girardeau. The drafts

were drawn by Muse, and signed O. F. Somers & Co. Thinks Muse was a member of the firm of O. F. Somers & Co.: not positive.

Solomon G. Kitchen complainant, examined May, 1870, testified, that in the spring of 1866, Wm. C. Rayburn agreed to take 119 bonds of the Cairo & Fulton Railroad Company, locate them on lands of the road, sell the lands and account for ⅛ of the proceeds. This agreement was reduced to writing. There was no change in the agreement. Rayburn had been examining the deed of trust executed by the Cairo & Fulton Railroad Company, to secure these bonds, relative to another transaction between him and witness. Some time afterwards heard that Rayburn was doing nothing with these bonds, and wrote to him to return them. Got no answer. Afterwards sent an order for the bonds by Robert Carter. Rayburn refused to deliver the bonds to Carter and wrote the following letter to Kitchen:

"Dear Sir, I received your note a few days ago and should have wrote to you before, but was on my way to Cape Girardeau. Colonel, I may have done wrong, but if I have, I thought it was the best could be done, and I hope you will be satisfied. I have sold the bonds, D. B. Miller advised me to sell. He sold and every one else that had bonds, I think. The whole number of bonds that went from Bloomfield was something over eight hundred thousand. I agreed to take whatever they got, and I only got ten thousand Dollars, or am to get by the first of April next. I ought to have went to see you before I sold, but hope you will be satisfied. I will write again soon. Let me hear from you.

W. C. RAYBURN.

Prairie City, Stoddard County, Mo., Feb. 8th, 1867."

Witness resumed,—"In 1863 Rayburn was in a bad condition financially. In 1865, after the close of the war he had a wagon and horses and some cattle. He then moved away from Arkansas up to Missouri. In 1864, in Arkansas he agreed to give witness $10,000.00 in confederate money for his undivided interest in 2,200 and odd acres, owned by witness and D. B. Miller, known as the St. Luke tract. He paid on account 9400.00 and odd Dollars. gave some drafts on the confederate Quartermaster and a note for $325.00 on Muse and Timberman, payable in southern money. Did not collect drafts or note. This was for an undivided half of the St. Luke tract. Witness went into Missouri in 1866. Saw Rayburn. They passed over the St. Luke tract. Rayburn said, he would like to go lower down near Clarkton, and if witness would give him enough of the bonds of the Cairo & Fulton Railroad Company, to enter 1000 acres of land, he would take them in lieu of his interest in the St. Luke land. whereupon witness gave him four bonds, which with the coupons made over $6000.00. This was in Bloomfield. The St. Luke land was disposed of in a settlement made by witness with the Union Bank and State Bank of Missouri, Miller and others. The St. Luke land was used at $4.00 per acre. Rayburn then went to Arkansas with witness and gave the receipt, dated 16th March, 1866, and witness gave him 119 bonds. At the time of giving these bonds witness delivered to Rayburn (in bonds) the price of a thoasand acres of land, according to the deed of trust which would be $5000.00, and Rayburn delivered up the receipt; told him if the land cost more, witness would make it up. The St. Luke land was worth only $4.00 per acre.

On cross-examination he said these St. Luke lands were worth $10.00 per acre before the war; parts of the tract were worth more than that. Not worth more than $4.00 or $5.00 now. The price was depressed in 1863 and 1864. The Railroad bonds were considered by witness to be worth 20 cents on the

dollar. He got a number of bonds from the Company in August 1866 at five cents on the dollar. There was no market for these bonds in Missouri. Witness thinks they could have been sold for much more than 5 cents on the dollar in New York, or Philadelphia (p. 31 of printed record). In 1866 it was discretionary with the trustees of the deed of trust to permit the purchase of any land with these bonds. Rayburn gave up his St Luke lands, on condition that he should get bonds enough to take up one thousand acres of land that suited him (p. 32). Took the receipt in Mrs. Rayburns name to secure her a living. Owed some judgment debts then. Did not intend to defraud his creditors. Did not tell Rayburn so. The judgments against witness Miller and others amounted to $84,000.00. — Did not state in August, 1866, that the bonds were not worth more than 5 cents on the dollar. Said they would not be under certain circumstances. Had a claim against the Company, and refused to receive bonds for it at more than five cents on the dollar—or $50.00 the bonds, coupons included—settled with the company in August 1866 at that rate for 168 bonds (p. 33). The St. Luke land is rich, level land—too wet for cotton. The receipt of March 16th, 1866, is in witness' handwriting. Rayburn is an illiterate man, but he can read and write; a good average man in knowledge among farmers. The judgments against witness were not entered satisfied of record.

On re examination he said, that the Cairo & Fulton Railroad Company owed him $3423.00. For this witness had a lien on all the bonds of the company. Witness retained 168 of the bonds, and gave a writing to the effect, that if the money due him was paid in 30 days, he would give up these 168 bonds. Was afraid all the good lands had been taken, so that the bonds were not worth more than $50.00 a piece for entering lands (p. 36).

The receipt of 16th March, 1866, signed by W. C. Rayburn, is as follows:

if they would pay the debt, he would reconvey the land. Gave them to 1st January, 1868. Rayburn said, that Moore M. Rayburn had some money coming from O. F. Summers, for the sale of cotton and would pay, if Muse did not. About 11th December, 1867, Muse came to witness, to know if he would take drafts, drawn on J. & S. Albert, of Cape Girardeau, by O. F. Summers and Co. Witness declined doing this, and referred him to Whittemore & Co. and afterwards heard from them, that they had taken these drafts and that they had been paid. Wm. C. Rayburn paid costs and commissions. Witness paid no money when he bought the land except costs, as he bought for his clients. After the payment of the debt, witness made a deed of all the land, to Moore M. Rayburn. Knew Moore M. Rayburn, before that time, but not intimately. Thinks he delivered the deed to Wm. C. Rayburn, in the town of Clarkton. The farm is near Clarkton. Wm. C. Rayburn was living on the place. Witness generally stopt at his house, when at Clarkton, and when he paid bills, paid them to Wm. C. Rayburn, but generally, he was not charged. Moore M. Rayburn was from 22 to 25 year old. In the spring of 1866, Kitchen sold the St. Luke lands, at $4 per acre. This was at Bloomfield. Rayburn lived 20 miles from Bloomfield; then he was pretty confortably fixed — neither finely, nor poorly fixed. Didnt know his pecuniary condition. He had six children living with him.

A. C. Carter, knew plaintiffs and defendants. He heard the negotiations between Jno. Timberman and Wm. C. Rayburn, concerning the purchase of the farm at Clarkton. The price agreed on was $5000,00. The bargain was made in January, 1867. Heard Rayburn say, that the money came from Railroad bonds, sold to Bedford, that he had sold the bonds for $10,000.00 that they were to give him all over $10,000.00. and their expenses, that they could make the bonds worth to them; and that if any excess over $10,000 was realised, he would

place it to the credit of Solomon G. Kitchen; that he had conveyed to Kitchen a tract of land at Saint Luke, and Kitchen told him, he would give him Railroad bonds enough to secure him that amount of land. About a week ago was at the farm, and Wm. C. Rayburn, told witness he had rented it for the year. It is worth $500 or $600 per year. He has six children. In the year 1867, Jacob V. Rayburn had an interest in the Nations Farm, in the lower part of Stoddard County, and had sold his interest, and was talking of going to Texas. He started and came back.

R. W. Carter testified, that he knew the parties, that he presented to Wm. C. Rayburn, a receipt for some Cairo and Fulton Railroad bonds. Rayburn said, he had sold the bonds to Bedford, and Kitchen was to have all that they brought over $10,000, that the $10,000 he retained was to pay himself for $10,000, which he was likely to be swindled out of, that he had bought land from Kitchen during the war for $10,000 in confederate money, for which Kitchen made him no deed, but had left with him to make him safe $5,000 in Cairo & Fulton Railroad Bonds, which he found to be almost worthless and that he retained the $10,000 out of the proceeds of the bonds, for which he had given Kitchen his receipt; and that he thought it nothing more than right that he should get back his money. There were 119 bonds named in the receipt.

Rudolph Weber testified that he knew Kitchen and W. C. Rayburn. W. C. Rayburn told witness, that he let Bedford have 123 Cairo & Fulton Railroad bonds, each for $1,000, with coupons for $10,000. Witness paid 15 cents on the dollar for these bonds in Stoddard County, and sold them in St. Louis for $26,340. Paid for them here by giving two notes, one at three months, and one at six months, each for $6,725, and $5,000 in cash. Made the cash payment 21st December, 1866, by check in favor of H. H.

Bedford. Paid the first note to Muse, son-in-law of John Timberman, and paid the second note to H. H. Bedford.

Wm. G. Pulcelan testified, that (at some time not stated) he had a note from Arkansas, against Wm. C. Rayburn and some one else for $300 and Rayburn told him that he was not worth a cent, that he was broken up by the war. He paid $100 which he said he borrowed. Witness believing him to have nothing, gave up his note. While he lived at the Nations Place (in 1866) he told witness he was worth nothing. He told witness he had paid for the Timberman place out of the money he got for the Railroad bonds, that he got them from Martha A. Kitchen and had given her a receipt, which he feared would ruin him.

This was all the testimony for complainants.

For the defendants John F. Starr testified, that he knew S. G. Kitchen and Mrs. Kitchen, and Wm. C. Rayburn; was at the residence of D. B. Miller, near Bloomfield, March 1866, when S. G. Kitchen and Miller met for the purpose of making a compromise with their creditors, by transferring to them lands in payment of debt. Among the lands which it was desirable to turn over to the Union Bank, their largest creditor, was a tract known as the St. Luke lands, the undivided half of which had been transferred by Kitchen to Wm. C. Rayburn. Miller urged Kitchen to get this undivided half back from Rayburn, as the Bank would not take any undivided interest. Kitchen asked Miller to speak to Rayburn about it, saying he did not like to do it as Rayburn had paid him for this land. Miller talked with Rayburn, who was willing to do what was just and right. Kitchen agreed to give him Cairo & Fulton Railroad bonds, enough to secure him $10,000, and said, that if Rayburn would give up the St. Luke lands, he could get more and better land with the bonds. The lands relinquished by Rayburn, was then and now worth ten dol-

lars per acre. Rayburn got the bonds from Kitchen, and in May 1866, placed some of them in the hands of witness, with instructions to go to Mississippi County to enter land with them. Witness made the attempt—could not enter land or get anything for them. Rayburn also made the attempt; without success. He also tried to sell them. The first offer he got was $19,000 from Bedford. It was the best that could be done with them. Witness thought so then, and still thinks so, (October 1869.) There were 122 or 123 bonds in Rayburns hands.

On cross-examination he said, he heard Kitchen, Rayburn and Miller talking the matter over, and particularly Rayburn and Kitchen, when Miller went out. Rayburn was willing to accommodate, but wanted to be safe. Kitchen said, it might be doubtful, if he could make him a good deed, but he would give him Railroad bonds with which to enter more and better land. Some time afterwards he saw the bonds in the hands of Wm. C. Rayburn, did not see them pass from Kitchen to Rayburn, knows he took a great deal of trouble in examining the lands of the Company and trying to enter them with the bonds without success.

Wm. C. Rayburn testified as follows: I am one of the defendants. Some time in March, 1866, at Bloomfield Kitchen told me, that if I would go with him to Arkansas, he would place in my hands a sufficient number of the bonds of the Cairo and Fulton Railroad, to secure me for half of a tract of 2,200 acres of land at St. Luke, which I owned at that time, and which Kitchen wanted for the purpose of turning over to the Union Bank in payment of his debts. I told Kitchen, that I would let him have the land for a fair equivalent, which my family needed. He said, that I could at any time raise the money on the bonds, that they were good. He lived in Green County, Arkansas. I knew nothing of the value of the bonds, but took his word. I went to

Kitchen's house; he told me, he wanted me to enter lands in Missouri with these bonds, in my own name and sell them. Asked what I would be willing to do this for: said I would have no trouble, except to get the numbers of the lands. I offered to do it for one-eighth. He then gave me five bonds, with which to enter lands, in lieu of the S. Lake lands He told me, that, with these five bonds, I could enter 1100 acres of land anywhere about Clarkton, Dunklin County, adding that he had a lot of more than 100 bonds that he would let me have, taking my receipt, so that I might enter land pursuant to our agreement. He told me, that valuable lands near Clarkton, were subject to be entered with these bonds at that time. I told him I knew nothing about the bonds, nor the Company, nor whether the five bonds he gave me, would enable me to enter 1100 acres or not. He assured me they would, and added, if they did not, I must pay myself out of the bonds he was going to take my receipt for. He said he would gave me maps and plats, and told me, that all the lands of the Company where subject to entry with these bonds. He told me, to get the numbers of more good land than I had bonds for, that he would furnish 200 more. He then wrote the receipt which I signed. He gave me 124 bonds of $1,000 each with coupons attached. I took them home, and went to work, hunting up the numbers of the lands; spent a good deal of time and trouble, and some money, and employed a man to assist me, and found, it was impossible to enter lands with these bonds; I then tried to sell them, but could find no buyers. This was in July, 1866. Kitchen came to my house, I told him, I did not believe I could do anything with the bonds. He said the Railroad Company would soon organise, and that I must get up the numbers of the lands, and be ready. He then called on me for my bond he had given me for the undivided half of the St. Lake lands. I gave it to him, and saw him put it in the fire. He again assured me on this occasion,

that the five bonds would satisfy me for my share of the St. Luke lands, and said if they did not, I could use as many of the others, as would be sufficient to raise $10,000, which was the price we put on my interest in the St Luke lands. At one time, I placed 80 of these bonds, in the hands of Henry Miller, requesting him to see whether any money could be had for them, having previously ascertained that lands could not be entered with them. Sometime afterwards, Miller told me that Weber would give $35 per bond. I went to Weber myself, he said he did not want to buy, I asked him, if he had not offered Miller $35 per bond, said he had not, that he had Railroad bonds himself, and would sell them to me for $25 per bond. I placed six bonds in the hands of H. H. Bedford, with instruction to enter lands, if possible with them; after a while he returned them to me. Also I placed 40 in the hands of Mr. Starr, and employed him to enter lands with them. I became very much discouraged: concluded I could get nothing for the bonds.

I saw a proposal of Kitchens, estimating 168 of these bonds at $8,424. This was in August, 1866. After this in December, 1866, Bedford offered me $10,000 for these 123 bonds, and I took it. He paid me the money. With part of it, I bought the Timberman farm, and took the deed to my son, Jacob V. Rayburn as an advancement to him in good faith. Some time afterwards, I learned, that these lands were bound by a judgment against Timberman and Muse. Saw the land advertised. In September, 1867, Owen bought it and took the Sheriffs deed. In May, 1868, he sold the land to Moore M. Rayburn, for which he paid every dollar of his own effects. No part of the money received from the sale of the bonds went to pay for the lands bought by Moore M. Rayburn. It was afterwards discovered that in this farm was 40 acres of school-land, that had never been sold by the State. For this also Moore M. Rayburn paid his own money, and took the patent in his own name.

On cross examination, he said, Miller was present, and I think Star was when I had the conference with Kitchen. I bought the St Luke land from Kitchen and had a bond for a deed, reciting payment in full. Paid him in confederate money. Gave Mr. Kitchen a receipt for 119 bonds. Have seen it twice since, once was, when Carter presented it, in January, 1867, and the second time, was in 1868, at Bloomfield, after this suit was commenced. I sold the bonds to Bedford and got the money. Paid Timberman for his farm out of it, the first time, it was purchased. Owen purchased the land, at Sheriffs sale, and sold it to Moore M. Rayburn for $1,700. I paid $200 of that money to Owen, for Moore M. Rayburn; didnt see Moore M. Rayburn make any other payment, but Owen made a deed, to Moore M. Rayburn. He was a married man—had then been married two years. He was 22 or 23 years old, when he married. I made no advance to Moore M. Rayburn, at the time of this payment to Owen. Have made no advance to him, since 1863, exept $200. I paid him for his labor in 1866. He sent me money from the army, to buy him land, and I bought a piece of land in Hamilton Prairie, in which he opened a farm, raised five bales of cotton and 700 bushel of corn in 1867, and afterwards, sold the place for $1100 in money. He also had a house and lot in Clarkton, which he sold to O. F. Summers. Dont know how he got that house. All that I know of his means of getting the money to pay Owen, was from the sale to Summers of the five bales of cotton and the house and lot. This house and lot was not a part of the land purchased by me from Timberman.

Also deposition of E. W. Hill who testified, I have known the parties since 1866. In August, 1866, I heard W. C. Rayburn say he had some of the bonds of the Cairo and Fulton Railroad Company, and that he was trying to enter land with them. He asked me, how they could be converted into land. I told him, I didnt know, that I had some such bonds, which I was trying to

use in that way. He inquired the value of the bonds, I told him, they were not worth much, I had offered my bonds for sale and could not get five cents on the dollar. They could not be sold at all outside of the arrangement effected by Bedford. In August 1866, I heard Kitchen say, he would take five cents in the dollar for the bonds he had, and he gave Bedford a writing to that effect. There were no lands subject to entry with these bonds, except at such prices, for the time being, as the trustees chose to ask; and at no time in the year, 1866, was there a board of trustees in existence. I heard Kitchen say, he was indebted to Rayburn, and that he had placed the bonds in his hands to secure him the payment of it. I do not recollect the amount of the indebtedness.

On cross examination, he said the bonds depreciated in 1861, and so remained until Bedford and Weber made an arrangement for selling them in the fall and winter, of 1866. I know that this arrangement raised the price of the bonds for it enabled me to sell some that I had.

Also of Henry Miller who testified, I am acquainted with the parties to this suit. In October 1866, W. C. Rayburn placed in my hands, 70 or 75 bonds of the Cairo & Fulton Railroad Company, with instructions to see if lands could be had for them, or whether they could be sold for money. I offered these bonds to several persons — Tiederman, Weber and others, but was unable to find a purchaser. Tiederman told me to hold on and he would see about it, but he never gave me an answer. I could not get either land or money for the bonds and returned them to Rayburn, telling him to sell them, for whatever he could get as I did not regard them as of any value. I would not have given a dollar a piece for them at that time. The Saint Luke lands were worth then ten dollars per acre; they are now (1869) worth more.

H. H. Bedford testified, I know the parties to this suit. In the spring of 1866, I was attorney for the Union Bank of Missouri, and obtained judement against D. B. Miller and S. G. Kitchen for a large sume of money. Owen and I had prevailed on the creditors, to take lands in settlement at a certain rate. In the adjustment the Saint Luke lands fell to the Union Bank. I learned, that half of this tract had been sold by Kitchen to Rayburn, and it was necessary for Kitchen to get back from Rayburn the half of 2,200 acres of land, then valued at ten dollars per acre. I was attorney of the Cairo and Fulton Railroad Company from 1865, until spring of 1868, and know that there were no means of obtaining title to any of their lands from 1st January, 1866 until 1st April, 1867. In the course of the settlement of the claims against the Company, I went to Arkansas with E. W. Hill and D. B. Miller, to get three hundred bonds, which Miller informed me he had placed in Kitchens hand for safe-keeping. Kitchen said he had the bonds, and would give them up if I would pay him $8,423, which he said the Company owed him. I asked him, how many bonds he would take for his debt. He said he would not gave over $50 per bond Finally he gave me his receipt for 168 of the bonds, with a condition to give them up if the Company would pay him his debt in 30 days. I told him at the time, that the Company had no money or means available in the time limited. This receipt was dated 23th August, 1866. In October, 1866, Rayburn placed six bonds in my hands with instructions to get land for them if possible. I made attempts to get the board organised without success, and returned the bonds to Rayburn, telling him, they were then worthless, but would be worth something after a while. The board of trustees was not organised until 23th May, 1867, until which time the title to no lands could have been got, moreover the lands of the Cairo and Fulton Railroad Company never could have been entered by means of the bonds, but were subject to

sale by the trustees at such prices as they saw fit to impose, (page 150 of written, 66 of printed record.) All these facts I stated to Wm. C. Rayburn when I returned him his bonds. I have heard Kitchen say, he had made Rayburn secure for his interest in the St. Luke lands, by placing in his hands, bonds of the Cairo and Fulton Railroad Company, sufficient to secure him amply against any loss he might sustain from surrendering up that interest.

This witness produced and annexed to his deposition the receipt given by Kitchen for the 168 bonds. These witnesses for defendant were all examined, and their testimony reduced to writing on 28th October, 1869, before Crabtree, a Justice of the Peace for Stoddard County, Missouri. The plaintiff was present by his attorney and he cross-examined Starr and Rayburn at some length—E. W. Hill, very shortly—and Henry Miller and Bedford not at all—The defendants then put in the deed from the Sheriff of Dunklin County to R. P. Owen, and the deed of Owen to M. M. Rayburn, also the patent of the state Missouri for 40 acres, part of the 16. section, and this was all the evidence in the cause.

Upon this evidence, the appellees submit that it is well established,

1. That Kitchen being indebted to W. C. Rayburn in the sum of $11,000, placed 123 bonds of the Cairo and Fulton Railroad Company in his hand as security; that he authorised Rayburn to use so many of these bonds as would pay him or satisfy him for the debt, and that Rayburn promised to make use of the rest to enter lands of the Railroad Company upon certain conditions for the use of Kitchen.

2. That the primary lien on the bonds was the re-payment of the debt owing by Kitchen to Rayburn, and that Kitchen grossly deceived Rayburn to as the value of these bonds, and the uses to which they could be put.

3. That Kitchen did this willfully and with full knowledge of the actual facts; and that the statements made by Kitchen to Rayburn respecting these bonds were glaringly false; Kitchen having the fullest means of knowing this from his connection with the Company.

4. That Rayburn unsusspectingly took the bonds and gave the receipt to Rayburn, believing in the false representations of the latter; that he, for more than eight months persevered in fruitless attempts to do what Kitchen had assured him, he could do without difficulty and fully ascertained that all such assurances were without foundation or truth.

5. That he remained with the bonds in his hands and his debt unpaid, and learned that in the meantime Kitchen had under circumstances indicating sincerity on his part, declared that 168 of these same bonds were worth only $8,423.

6. That after hearing this, and being destitute of any other resource he sold the bonds (123) for $10,000; less than enough to pay him for his St. Luke lands at the price they bore in March, 1866, but limiting his debt to that sum.

7. With part of this sum he purchased the Timberman farm and caused the deed to be made to Jacob V. Rayburn his son. But,

8. The title to this land under this purchase was entirely defeated by the judgment of Whittemore & Co., and the sheriffs sale thereunder to Owen.

9. That, thereupon Moore M. Rayburn owning five bales of cotton and a house and lot in Clarkton, sold them to O. F. Summers, and with the proceeds and the money he received from the sale of land in Hamilton Prairie paid the money through Whittemore & Co. to Owen, in consideration of which Owen conveyed the land to him.

10. That there was still 40 acres to which none of the parties had title until February, 1869, when Moore M. Rayburn purchased it from the State of Missouri.

There is little in this case of an interesting nature. Audacious misrepresentations on one side, and very simple credulity on the other are unhappily too common to arrest attention and no questions of legal difficulty are presented by the record.

It appears plainly, that W. C. Rayburn had purchased from Kitchen, and paid for the undivided half of the St. Luke tract of 2,200 acres formerly owned by Kitchen. This appears from the testimony of all the persons who were examined in the cause. Kitchen it is true attempts to show that a portion of the money, about one-twentieth, had not been paid except in drafts not collected. But he is flatly contradicted by Wm. C. Rayburn and by Starr (p 58,) and E. W. Hill (p 64), all of whom testify that in 1866, Kitchen admitted that Rayburn had both purchased and paid for this land. Kitchen in 1866 was averse to asking Rayburn to give up this purchase for the declared reason that payment for it had been fully made by Rayburn (p. 58).

With rather questionable taste, stress is laid by both Kitchen and his counsel on this payment having been made in confederate money. It is not perceived that this mended the matter for Kitchen. Both he and Rayburn appear to have given credit to this sort of security at the time the purchase was made, and from the whole testimony it is inferable that both Rayburn and Kitchen were on the southern side of the late civil war. The bargain was made between them on terms of perfect equality, and if the land proved more valuable than the promises of the confederacy, it was Kitchen's miscalculation, and the good fortune of Rayburn. The land was worth ten dollars an acre be-

fore the war, when the currency was gold, by the admissions of Kitchen himself, and disinterested witnesses tell us that it was worth ten dollars an acre in 1866, and was worth more in 1869.

Nothing can be more stupidly disingenuous than Kitchen's account of the transaction between him and Rayburn in 1866. Any one reading (and believing) it, (see his deposition, p. 26 and following of the printed record,) would suppose that the proposal to exchange the St. Luke tract for land to be entered with the Cairo and Fulton Railroad bonds came from Rayburn. But it is submitted that nothing is clearer than that Rayburn knew nothing whatever of these bonds, or of the pleasant fable of the possibility of converting them into land at a rate that would actually make each bond worth double its face. For this and no less was the pretension of Kitchen. He actually declared to Rayburn (and the latter seems to have half believed the monstrous story) that with five of these bonds secured by the second mortgage of a Railroad Company not commenced, he could get possession of land worth $11,000. But the proof is abundant that in 1866, Kitchen wishing in order to make an advantageous settlement with his creditors, to get possession of the St. Luke tract, made glowing promises to Rayburn, procured his St. Luke lands, and fed him with the idea that there was a grand opportunity for making money by locating from 40,000 to 50,000 acres of Railroad lands with the bonds of the Company. That this whole scheme was the suggestion of Kitchen, and Rayburn only the passive recipient and credulous believer, is clear.

Kitchen made the boldest statements to Rayburn. At the very time when he knew the bonds to be worth only $50 a piece, coupons included, he assured Rayburn that they were worth $2000. He says, that he gave Rayburn the mortgage for perusal. We can see from the record what likelihood there was of any real information coming to him from the sight of this paper.

But it is sun-clear, both from what Rayburn swears to and what disinterested persons heard Kitchen say, that after all, the native caution of Rayburn did not desert him. Though dazzled with the offers of Kitchen he clung to the idea that first of all he should receive payment out of the bonds placed in his hands for the $10,000, for which it would seem he was willing to sell his interest in the St. Luke lands, and not until the satisfaction of this first claim was the arrangement, in which he and Kitchen were to be jointly interested, to take effect. Rayburn swears to this in his answer, repeats it in his deposition taken in 1869, fortifies it by what disinterested persons heard Kitchen say in 1866, and though the deposition of Kitchen was not taken until six months afterwards, neither in that nor by any other testimony does he seriously attempt to get rid of Rayburn's version of the contract made between them in the spring of 1866. Taking that contract as established, what follows is easy and natural. Rayburn lost much time and some money in the attempt to locate lands by means of these bonds. He not only attempted it in person, but employed others to accomplish the task. He surely selected the most competent agents, and was told by Mr. Bedford whose aid he sought that the thing was impracticable. M. Bedford indeed tells us that at no time before or since 1866, has it been possible to locate lands by means of these bonds; one would readily come to this conclusion A PRIORI, and here experience gives confirmation to the inference.

In all fairness what remained for Rayburn to do? Kitchen had got his St. Luke lands and had placed in his hands bonds, of which he was told by parties who had some of the same securities (?) that they were not worth in the aggregate $600, or five dollars a piece. In fact one person (H. Miller, p. 65, printed record) tells us, that he would not have given one dollar a piece for the lot. At this juncture an unexpected opportunity arose from a combi-

nation made by Bedford and others. They created a transient market for the bonds, and for a short season, those who held them could dispose of them for about $80 per bond, or 8 cents in the dollar. Rayburn would have been foolish to delay realising from them on this first and unexpected opportunity enough to pay himself for his St. Luke lands, and if the bonds had afterwards declined we can easily imagine what answer Kitchen would have made to a suggestion that Rayb irn held the bonds for a further rise. The only rise we hear of seems to have been comprised in a very short space of time: and we see from Bedfords deposition that the Company declined to avail itself of the privilege of re-purchasing 168 bonds at $8,423 or 5 cents in the dollar. We must remember that Kitchen declares, that he agreed with Bedford to permit the company to re-purchase these bonds. (p 36 of printed record.) Let this be so. It is clear that the company did not redeem them, for if it had, Kitchen's receipt would have been taken up. But if it had the right to do so, at 5 cents in the dollar and failed to do it, the inference is irrisistible, that it had no interest in making the redemption.

But these things being thus established, Rayburn had the best of titles to the $10,000, he received for the bonds and Kitchen had no right to follow the money or its proceeds. It was Rayburn's money and not his. Yet it was only upon the ground of its being the money of Kitchen, that the land bought with it could be claimed as Kitchen's; and here would seem to be an end of the plaintiffs case.

But this was not all. Rayburn had purchased the land from John Timberman and paid him with part of the money received from Bedford for the bonds. It happened however, that at the time, when this deed was made there was a lien on this land in favor of a judgment creditor: this lien was enforced and R. P. Owen, attorney of the creditors became the purchaser at sheriffs

sale. The deed made by the Sheriff entirely defeated the title of Jacob V. Rayburn, to whom Timberman had conveyed, at W. C. Rayburn's request. It behooves us to see what followed. Moore M. Rayburn tells us in his answer, that he paid to Owen the price of $1,565, and purchased from him the title he acquired at Sheriffs sale: and that he afterwards acquired the title of the state to 40 acres of the 16th section paying throughout his own money. This answer stands as true unless overthrown by sufficient evidence. Is it in fact encountered by any? There is liberally no evidence to impeach the answer. All that was given stands strongly to its support.

It seems Muse and Timberman were in partnership, and it is alleged that the debt for which judgment was obtained by Whittemore & Co., was the debt of Timberman for which Muse was surety. Now, who paid the debt to Whittemore? we are told by Whittemore himself that it was paid except the costs, by two drafts drawn by O. F. Summers & Co. on J. & S. Albert of Cape Girardeau, amounting to $1,444.12. But we learn from W. C. Rayburn that Moore M. Rayburn sold a tract of land at Hamilton Prairie, in 1867, for $1,100 (p 63, of the printed record), and that he sold to O. F. Summers 5 bales of cotton and a house and lot at Clarkton, in the fall of 1867, for the purpose of raising money to pay the price named in Owen's deed of this land to him. We may be misled by what R. P. Owen says of this payment. He tells us it was made to Whittemore, not to him except the costs and commissions, amounting to $200, which he received from W. C. Rayburn. We see from the rest of the testimony how this was. Moore M. Rayburn paid through O.F. Summers & Co. the debt to Whittemore & Co. which was $1,444.12 exclusive of costs. The costs were directly paid to Owen. No part of this money was the proceeds of the sale of the Cairo and Fulton Railroad Company's bonds.

If this story could be contradicted, Muse would be an appropriate witness for the purpose. He was examined by the plaintiff, and it is sufficient to say, that no attempt was made to extract from him any testimony discrediting it in the slightest degree. This would appear to be sufficient. But Summers could have been likewise called by plaintiffs, if W. C. Rayburn's story had been seriously called in question. Unimpeached as it is by evidence, it seems unwarranted to dwell further on the subject. The taking of testimony in the case was not closed until May, 1870. All of defendants witnesses were examined in October, 1869. There was no technical reason for omitting to clear up any obscure part of plaintiffs case, or to support and fortify any weak part of it. With all its imperfections on its head, with no pretence of surprise it was brought to a hearing in the spring of 1870, shortly after Kitchen's deposition was taken. Every thing that plaintiffs could show, must be taken to have been shown; and it submitted that all of it amounts to nothing.

The case of defendants is superfluously strong. If the deed of Moore M. Rayburn were out of the way; if the title of Timberman had not been defeated by the Sheriffs sale, it is still abundantly clear, that Wm. C. Rayburn had the fullest right to treat the bonds placed in his hands as security for $10,000, and to sell them for the purpose of raising that sum; that he sold them advantageously and for 60 per cent more than Kitchen declared them to be worth in August, 1866; and that the proceeds which did not exceed what Kitchen owed him, were rightfully his own, with the disposition of which Kitchen had no pretence of intermeddling.—All these is we submit, so clearly proved that a sort of reluctance is felt to present the other defence at all, which is valid even if Rayburn had abused trust in selling the bonds. We challenge criticism of our conduct. There was on the part of Wm. C. Rayburn no thought of concealment of any matter connected with this transaction. All was open and above board,

He avows the purchase of the land from Timberman with a part of the proceeds of the sale of the bonds, and he justifies the sale we submit, triumphantly—nevertheless if this were otherwise the title of Moore M. Rayburn who purchased from Owen the land, which he had acquired by a paramount title, would remain unquestionable. The other defendants really have no pecuniary interest in the controversy but the character of W. C. Rayburn their ancestor is involved and they as well as their counsel dislike to make, even for the sake of the argument, a concession which renders the second branch of the defence examinable atall.

These are two matters, one suggested in the bill, and the other ore tenus, at the hearing, which perhaps require some notice.

In the bill it is gravely urged, that when Moore M. Rayburn took the deed from Owen, he was aware of the previous deed from Timberman to Jacob C. Rayburn; and that Owen knew the same thing when he purchased at Sheriffs sale. The appellee is at a loss to conjecture the reason or inspiration of thes statement. Anything more irrelevant can hardly be suggested. Suppose OWEN DID know, that the judgment debtor of his clients had, after the lien of the judgment attached, made a sale of his lands. He also knew, as a lawyer, that the moment the execution was levied (which was before the making of the deed,) the judgment though rendered in another County, became a lien (§23 of ch. 160, G. S. of Mo. page 643,) and that no subsequent sale could prejudice his clients. Can it be possible that the plaintiffs imagine the title acquired by Owen to be in any way affected by such subsequent conveyance? But if not affected by the conveyance itself, it is preposterous to suppose it to be affected by notice of it.

At the hearing it was urged that W. C. Rayburn himself confessed that he had done wrong in selling the bonds, and that he

told Mr. Phelan (the attorney for plaintiff by the way) that he feared the receipt he had given to Mrs. Kitchen would be his ruin (p. 58 of printed record). We have no doubt that he did thus express himself, and we do not think the explanation very difficult. He had not seen Kitchen for some time, and the receipt he had given was to Mrs. Kitchen, not Mr. Kitchen. Nothing is more natural than that he should fear that he had involved himself in a doubtful controversy with Mrs. Kitchen in whose name the receipt was given. He had no claim against her. He had taken property that stood in her name for the satisfaction of a debt due to him from her husband. He had done this upon the faith of a verbal contract with Kitchen. The question was not clear to an unprofessional mind. He feared he had gone too far in doing himself justice. He did not know how far the writing might conclude him. In fact it was this mysterious writing, this receipt, of which he was afraid. He did not then know how often in the interval Kitchen had corroborated the version of the transaction on which he (Rayburn) relied. Under these circumstances he was uneasy. Is it wonderful, or does it impute blame to him, that he was so ?

The Court however is not interested in knowing the emotions of his mind, or the inferences he drew from the facts within his knowledge. It is interested in knowing what the facts were.—These are shown plainly by the answer, and it is submitted that the testimony fully supports every position there taken. The plaintiffs as early as July, 1869, (indeed as early as October, 1868, for the answer to the original bill substantially contained all the statements of the answer to the amended bill) were apprised in detail of the defence on which the respondents relied. Depositions were taken in the fall of 1869, by both parties, and some six months later Kitchen himself testified at great length. —Soon after this, the case was heard, and it is impossible to suggest any failure on the part of plaintiffs to bring to the notice of

the Chancellor every fact in their favor of which even colorable evidence existed. It is believed that the appellees have no occasion to invoke in their favor the maxim of Equity jurisprudence which gives to the answer a force not to be overcome except by preponderating testimony. If the evidence on both sides be weighed without regard to any rule of a technical nature, it is submitted that it establishes in a most satisfactory manner what the answer sets up. Judged according to the practice of the forum in which the cause is pending, it is confidently and respectfully submitted that there can be but one conclusion from an examination of the record, and that this is that the decree of the Circuit Court must be affirmed.

THOS. T. GANTT,

OF COUNSEL FOR APPELLEES.